OSHA OVERSIGHT: AERLEX CORP. FIREWORKS FACTORY EXPLOSION

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

HEARING HELD IN TULSA, OK ON OCTOBER 5, 1985

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OSHA OVERSIGHT: AERLEX CORP. FIREWORKS FACTORY EXPLOSION

SATURDAY, OCTOBER 5, 1985

House of Representatives,
Subcommittee on Health and Safety,
Committee on Education and Labor,
Tulsa, OK.

The subcommittee met, pursuant to call, at 9:30 a.m., at the Vo-Tech Center, Tulsa, OK, Hon. Joseph M. Gaydos (chairman of the subcommittee) presiding.

Members present: Representatives Gaydos, Synar, Jones, and Tauke.

Staff present: Sy Holzman, deputy staff director; and Dorothy Strunk, Republican senior legislative associate.

Mr. Gaydos. The committee will come to order.

Let me at the outset thank all of the citizens that are making their appearance here today. I am from the Pittsburgh area, in Pennsylvania. I am here as chairman, and I am very happy to accommodate your Congressman in his request that we come down here and review this very, very important circumstance.

Last June 25, an explosion at the Aerlex Corp. fireworks plant in Hallett killed 21 employees, injured 5 others, and destroyed most of the buildings on the site. During the course of the investigation that followed, some disturbing information came to light to the committee up in Washington. This hearing today is a further examination of that information.

Incidentally, for general information, we just came from Institute, WV, where we had another problem involving toxic emissions.

With me today are Congressman Mike Synar from this Second District of Oklahoma, and he represents the Education and Labor Committee, full committee, and doesn't serve on the subcommittee, but serves on other subcommittees. So we are fortunate in having him here with us today.

Mr. Tauke has been a Member of Congress for some time, very active on Education and Labor, and brings much experience with him.

Of course, our own Member here has been so persistent that we came out here when we finally could accommodate him. He thought it was essential, fundamentally necessary, and that is why the committee is here. I am most grateful to Mike for inviting us out here. I know this is going to be a very, very beneficial and important hearing for the subcommittee.

Mr. Jones has also been active in Congress over the years and a very close personal friend, along with Mike. We met him on a plane coming down, and he said he would change his schedule. I see his word is his bond, and he is here with us. So we are glad to see you, Mr. Jones. Is it the First District?

Mr. JONES. That is right.

Mr. GAYDOS. First District. We welcome him in participating at this very important hearing.

Let me make some very fast passing comments, and I will ask the other members if they want to make any statements.

Of particular interest to the subcommittee this morning is OSHA's role in inspection of fireworks manufacturing plants in the Nation. It is no secret by now that OSHA was not aware that the Aerlex plant was not on OSHA's list for inspection, and, indeed, OSHA wasn't even aware of the company's existence, we understand. It should be noted that the Oklahoma Fire Marshal also was unaware of the company's existence noting that there had been no formal notice of its restarting operations after an explosion back in 1979.

It is interesting that the Bureau of Alcohol, Tobacco, and Firearms was aware of Aerlex, and we are curious to know what particular circumstances brought Aerlex to ATF's attention. Not too long ago before the 25th, the tragedy, ATF had inspected parts of the plant over which it had jurisdiction. And I am concerned that its inspections either missed what was easily visible, an apparent violation, or if they did notice them, failed to inform the other Federal agencies with the fundamental jurisdiction. In any event, our concerns have prompted today's hearings.

Our witnesses are Dr. John Conkling, executive director of the American Pyrotechnic Association, which represents fireworks manufacturers throughout the Nation; Mr. William Earle, Chief of the Firearms and Explosives Division, Office of Compliance Operations of ATF; Mr. Fred Rucker, Oklahoma State Fire Marshal; and Mr. John Miles, Director of OSHA's Field Operations.

Another witness, Mr. Gary Courtney, of Oklahoma State University, can't be with us and is submitting a report, and, without objection, at this time, we will make that report a part of the formal record in its entirety.

[Statement referred to follows:]

PREPARED STATEMENT OF G.M. COURTNEY, FIRE SERVICE TRAINING SPECIALIST

Honorable Members of the Committee on Education and Labor, the Subcommittee on Health and Safety of the U.S. House of Representatives, and Guests; First, I wish to extend my heartfelt sympathy to the men, women, and children that have survived this year's hazardous materials incidents; many of them face long periods of convalescence and re-orientation to society as their new selves. Second, I also want to recognize the relatives and friends of this year's victims of hazardous materials incidents; there are many unrecognized and unlauded heroes that have mourned, buried, and will always remember the dead; those that have comforted and treated the injured; and those that have cleared the debris and begun life anew.

I hope that this forum will represent the interests of these people: those that profit the least and bear the greatest risk for society's need of these materials: the workers of this country, the innocent passerby, those that must trust to the expertise and good judgment of others to keep them reasonably safe from harm, and those people that are mandated to respond and mitigate these incidents.

It was my place to have recorded the events of the catastrophic explosion of special fireworks occurring at the Aerlex facility on the morning of June 25, 1985.

To summarize my field experience and formal training; I am a veteran firefighter of fifteen years' experience with various state, county, and municipal fire departments in California and Oklahoma. I have worked on engine companies and rescue squads, have been employed as a researcher and editor for an international publisher of fire department training manuals, instructed both firefighters and their officers, and participated in the promulgation of national standards for the fire service. I have served as a "loader" for a licensed pyrotechnic in California and have inspected public displays before their initiation. I hold degrees as an Associate in Science in both Fire Science and Fire Protection and Safety Engineering Technology.

Most importantly, I want to make my position clear; I shall never and do not condone or support any use of explosive devices for public entertainment: not salutes, not starbursts, not lady-fingers, not black-cats, and not sparklers. There are no explosive devices that I can endorse as safe for citizens to use.

The Great State of Oklahoma is throwing off its long-held, and occasionally-deserved, image of backwardness by prudently increasing the application of its governmental restraint. We know that special public and privately discharged fireworks are dangerous commodities that can injure, kill, and inordinately tax the resources of both, our citizens and the governmental agencies that serve them.

All such explosive devices should be banned from being manufactured, sold, or discharged within the borders of this State's jurisdiction.

Whether public opinion has been effected sufficiently by these recent tragedies to substantially motivate such a radical change in policy is not yet known; but we know what the policies of the past have wrought: needless loss of life and irreparable damage to communities across our land.

I cannot begin to express the anguish with which I viewed the scene that day; I felt that it was a personal failure for myself and for every safety professional. I pray that we have learned a valuable and lasting lesson.

Mr. GAYDOS. The video tape and slides will be presented by Mr. Rucker.

Let me go back to Congressman Jones and ask him if he wishes to make any opening statements. Mr. Jones.

Mr. JONES. Only, Mr. Chairman, to welcome you to Tulsa and to thank you for conducting this hearing. As you have pointed out so appropriately, our colleague from the adjoining district, Mike Synar, has been instrumental in investigating this particular tragedy and has kept the fire under all of us to try to get to the bottom of this and to avoid these kinds of tragedies in the future. This is in Mike's district, it formerly was in my district. I had friends who were killed in that tragedy, and we want to make sure that this sort of thing is minimized in the future.

So, Mr. Chairman, Representative Gaydos, who is a dear and close friend of mine, for whom I have the highest respect, thank you for conducting the hearing here.

Tom Tauke, who is one of the most respected Members of Congress on the other side of the aisle, as well as on our side of the aisle, thank you for being here.

And I particularly want to thank Mike Synar for keeping the fire burning to make sure that we get to the bottom of this.

Mr. GAYDOS. Now, I would like to call upon my good friend, Mike. And I do want to emphasize, on a personal note, that I just had a daughter that was married, and I should have been home, and I am here. So you know how important and how persistent he was in getting me to break that schedule, and that is a fact. Mike.

Mr. SYNAR. Thank you very much. And let me take this opportunity to thank you for coming today. I know that with our schedules, as busy as they are in Washington, it is very difficult, and I want to thank my good friend, Tom Tauke—who came in with me to Oklahoma—for coming today.

Finally, I want to thank Jim Jones, who has shared this responsibility for the Pawnee County area and the Hallett area for joining with me to make sure that we have a full, complete, thorough investigation of what happened at Hallett, so that the people of the Hallett area will have the full faith that these types of things will not happen again.

It is unfortunate, however, ladies and gentlemen, that a tragedy such as this that occurred in Hallett really had to bring us here today and bring the focus of attention on the safety and regulatory problems in the fireworks industry. I am hopeful that today's hearing will result in improvements in both industry practices and Federal regulation.

It is difficult for me to imagine more serious allegations than those made by the Occupational Safety and Health Administration about the conditions at the Aerlex plant. Obviously, this hearing cannot alter the tragic event which occurred. However, by searching for reasons for this accident, we can hopefully avoid any of these incidents in the future.

Stated very generally, I think we have two questions before us today: First, why did the conditions at Aerlex go unnoticed by Federal and State agencies responsible for overseeing the plant? Second, what is being done to ensure that other plants, now and in the future, will operate safely?

I look forward to discussing these matters and investigating this very thoroughly.

Before I turn it back to Joe, I know that there are a number of people here from the Hallett area who would like to make sure that their knowledge of the circumstances of what occurred at Hallett would be brought forward.

We have a set witness list today, and there are two reasons for that. First of all, because of the time limitations that the chairman has, but more importantly, because of all of the pending legal cases that exist, it would be improper for this congressional committee to take testimony which could jeopardize those potential legal cases.

If, however, you are concerned and want to make sure that your thoughts are included in the record, I want to invite you to include written testimony to me, Don Gray, or Gene Wallace, sitting behind me, either today or in the future so that we can advance that to Chairman Gaydos' subcommittee so that he may make it part of the record.

However, because of the time limitations and the legal problems, we will not allow you to testify today so that we don't jeopardize what cases will be pending in the courts in the future.

Again, Joe, Tom, and Jim, thank you all very much and let me conclude with saying thank you to all the witnesses, some of whom have traveled great distances to be with us today.

Mr. GAYDOS. Thanks, Mike.

And at this time, I call upon, to ensure a bipartisan flavor to the committee, I call upon my good friend from Iowa, the Second District, Tom Tauke.

Mr. TAUKE. Thank you, Mr. Chairman.

This is my second visit to Oklahoma since I have become a Member of Congress, and I want to thank Congressman Mike Synar for his hospitality on both of these visits. And it is great to be here, too, with Congressman Jim Jones. I consider them both good friends, and I know that they are able Members of the U.S. Congress, well respected by all Members of the House of Representatives.

I must say that it is a rare occasion in Iowa when our football team is ranked No. 1. Now, in Oklahoma, you may have that happy circumstance occur a bit more often. But in Iowa, this is the first time, I think, in my lifetime that this has occurred. And I just want you to know that this Saturday, I came to Oklahoma instead of going to Iowa City, in part because of my great respect for Congressman Synar, and in part because of the fact that I could come to Oklahoma this Saturday, which is perhaps one of the few times that it might be possible, to say the Hawkeyes are on top of the Sooners.

But I want to also say that the main reason that I came, obviously, is because of the very serious nature of the problem that is presented to us by the incident which we will look into this morning. Obviously, this is a circumstance which was very tragic, not only because of the loss of life that occurred, but because it is the kind of circumstance which should have been prevented by the rules and regulations which we have adopted at the Federal level in order to ensure workers' safety. And it is because of a deep commitment on the part of all of the members of this panel for the safety of workers that we are here today to try to determine what went wrong and also to determine what we can do to prevent this kind of thing from occurring in the future.

I know under the leadership of our chairman and with the prodding of our colleagues from Oklahoma, that this subcommittee and the full Committee of Education and Labor will do everything within its power to be able to ensure that this kind of incident does not happen again. So I thank my colleagues for their hospitality and, you, Mr. Chairman, for your kindness and look forward to hearing the testimony this morning.

Mr. GAYDOS. Thank you very much, Tom.

On my left, so that the audience here understands who is participating in the hearing, we have Ms. Dottie Strunk, who is the minority senior legislative associate on this committee and who has been with the committee for many, many years, and on my immediate right is Mr. Sy Holzman, representing the majority on the subcommittee.

Let me say that the jurisdiction of the committee is quite broad. We have looked into grain elevator explosions down in New Orleans and in other parts of the country, Texas, and we have under our jurisdiction all of the mine accidents that happen in this country. That is, coal mines and other metal, nonmetallic mines. We had atomic plant problems; Three Mile Island up in Pennsylvania is something we are concerned with.

So the jurisdiction is broad and very, very important, fundamentally important to the health and well-being of every working man and woman, both white-collar and blue-collar in the country. So it is a very, very active subcommittee.

And, again, I want to emphasize that is why it is so difficult for us to make appearances throughout the country, because we are needed all over the country. We could get out every day. So I want you to know that it is with personal gratitude and appreciation that I was able to respond to our good friend, Mike.

By now you have heard enough preliminaries.

On behalf of the committee, we call the first witness, Dr. John A. Conkling, executive director of the American Pyrotechnic Association. Doctor—and, if I may, I would like to accept your testimony in its entirety as you have submitted it. If you wish to summarize it, the committee would be most grateful. And we can get right into some questions with you, or you may proceed in the manner which would best serve your purposes for being here today. Doctor.

STATEMENT OF JOHN A. CONKLING, EXECUTIVE DIRECTOR OF THE AMERICAN PYROTECHNIC ASSOCIATION

Dr. CONKLING. Thank you very much, Mr. Chairman, and Members of the Congress. We have prepared and submitted a statement expressing our view of regulations in the fireworks industry. In the interest of time, I will waive the reading of the statement. I hope you will have the opportunity to take a look at it. I would like to proceed to our summary portion.

It is our opinion at this time that the fireworks industry is heavily regulated by a variety of Federal agencies. The Department of Transportation does an excellent job of examining and approving for transportation purposes all fireworks devices that are transported in interstate commerce in this country. We feel that program is working very well.

The U.S. Consumer Products Safety Commission has put into effect since 1976 a very, very stringent safety standard for the backyard variety of class C common fireworks. We feel that these are an excellent set of regulations that very, very adequately and well, protect the consumer, and we have a note in our statement that we feel this may be a very, very unique case where all parties, the public as well as industry, have greatly benefited from the enactment of the Federal safety standards. The Bureau of Alcohol, Tobacco and Firearms licenses fireworks manufacturers, fireworks dealers, and they regulate——

Mr. SYNAR. Could you pull the microphone closer?

Dr. CONKLING. The Occupational Safety and Health Administration appear to us to be the Agency that has control over the manufacturing process of fireworks. Because of the category in which fireworks are included in the manufacturing category and the low number of employees nationwide engaged in the manufacturing of fireworks, and our estimate of the number of employees actually engaged in manufacturing legal, legitimate fireworks is—we estimate somewhere in the vicinity of 1,000 people.

Mr. GAYDOS. Throughout the country?

Dr. CONKLING. Throughout the country. And because of these two factors, we have not been a high-priority item with the Occupational Safety and Health Administration. There are a number of many larger industries with serious accident records that have required the expenditure of their time.

We totally welcome the national emphasis program that OSHA is undertaking to develop fireworks regulations, training, inspectors. Under this emphasis program, they will be conducting a training program in November at their Chicago Institute, training people to proceed out into the field and inspect fireworks facilities. We have been invited to participate with them in the developing of the training program. We greatly appreciate this opportunity. We are extremely interested in working with all of the Federal regulatory agencies to improve standards where they need improvement and to be sure that when the inspectors go out in the field, they are aware of what a fireworks manufacturing facility is all about and that they are adèquately trained to inspect and identify hazards that may exist in the manufacturing area.

Mr. GAYDOS. Could I ask you just, in short, what is the American Pyrotechnic Association? Very hurriedly, how big are you? How many people? How do you support yourself?

Dr. CONKLING. We are a national industry association. We represent 145 domestic manufacturers, importers and distributors of fireworks. Of these 145 members, perhaps 40 are actual manufacturers of fireworks. All of our members are very small businesses. A large large fireworks facility, manufacturing facility, will have 100 employees, annual sales of perhaps $2 to $4 million. If you compare this to cat food, it is an extremely small business. And this is our biggest member firm. The majority are considerably smaller than this, and certainly this is one of the factors that make the manufacturing of fireworks a very unique industry.

It is our feeling that there are three things that could immediately be done, put into effect, to improve safety in the fireworks industry. The first is adoption where appropriate in their regulations by OSHA and ATF of National Fire Protection Association's Standards 1123, which is the public display of fireworks, and 1124, manufacture, transportation, and storage of fireworks. These are two NFDA standards that have been developed by their Committee on Pyrotechnics with considerable input from the fireworks industry to address two areas that certainly need attention and regulation.

The second thing that we strongly recommend is the implementation of the national emphasis program, the inspection program of fireworks manufacturing facilities, using NFDA Standards 1124 as a guide. Inspectors should receive specific training in fireworks and fireworks manufacturing process prior to conducting these inspections.

The third is the initiation of a vigorous program to shut down unlicensed factories that are producing federally banned devices. In our opinion, the most serious problem facing the legitimate fireworks industry is the continued manufacture, sale, distribution of large federally banned explosive devices. Some people call them large firecrackers. We don't like to refer to them even as firecrackers. It suggests they are fireworks.

These are illegal explosives. They may contain 5,000 to 10,000 milligrams of explosives per unit. The Consumer Products Safety Commission's limit is 50 milligrams versus 10,000 and more. These cause very serious injuries to consumers each year, and in a 1985 report of the Bureau of Alcohol, Tobacco, and Firearms, these unlicensed factories, ATF is not aware of their existence, CPSC is not aware of their existence, OSHA will certainly not be aware of their existence. They were set up in barns, they are set up—in one case, a worm farm in Tennessee. But these unlicensed facilities accounted for 40 percent—in the manufacturing area—40 percent of the incidents reported to ATF at fireworks factories. They accounted for 59 percent of the fatalities, and they accounted for 63 percent of the property damage investigated by ATF over the period 1976 to 1984.

So well over half in terms of incidents, fatalities, and property damage was from federally unlicensed, State unlicensed, illegal operations, and the accidents caused by what they produce are serious injuries to the consumers.

There are presently laws on the books making this illegal. In our opinion, the laws are not enforced strictly enough, the penalties are not severe enough when they are applied. We would like these people out of business. They give our industry a very bad name. And we certainly hope that a vigorous program can be put into effect that will shut down these illegal factories.

We feel that control of the raw materials needed to produce these illegal explosives may well be required to stop these operations. Much of this has been gone into in considerably more detail in my statement, but we thank you very much for your interest, and I would be more than happy to answer any questions that you may have.

[Prepared statement of John A. Conkling follows:]

PREPARED STATEMENT OF JOHN A. CONKLING, PH.D., EXECUTIVE DIRECTOR, AMERICAN PYROTECHNICS ASSOCIATION

Thank you for the opportunity to express the views of the legitimate fireworks industry regarding safety in the manufacturing process.

The American Pyrotechnics Association (APA) is a national industry association representing 145 domestic manufacturers, importers, and distributors of fireworks. APA was founded in 1948 to promote the safe production and use of fireworks, and it has actively pursued this objective over the past 37 years.

We are vitally concerned with safety throughout the manufacturing, storage, transportation, and use of our products, and have always been interested in developing and implementing any laws and regulations that can aid in achieving these goals.

APA members are all very small businesses. A major fireworks manufacturer may have 100 employees and gross annual sales of $2 to $4 million. Smaller manufacturers will have 50 or fewer employees and correspondingly smaller production. Manufacturing occurs year-round, but a large percentage of annual sales and use occurs during a one-week period around the 4th of July, with results that provide entertainment and enjoyment to tens of millions of Americans.

Fireworks companies are all privately owned. Most are family businesses tracing back several generations, and numerous family members are usually found among the employees. The president or chief officer of such a company is not an "absentee owner". He must be knowledgeble in many areas, including sales, purchasing, the manufacturing process, personnel relations, plant safety, and a multitude of federal, state, and local regulations.

Safety activities within the fireworks industry centered for many years within the individual companies. Manufacturing processes and the associated safety precautions were passed on from father to son. Safety is achieved by selecting stable chemical mixtures for incorporation into fireworks, by limiting the quantity of composition in the work area, and by separating process buildings to prevent propagation of a fire or explosion.

Over the years, safety training has involved the use of apprenticeship programs for all new employees. Trainees begin with tasks of low hazard and work up to processes actually involving fireworks compositions. This system is still in wide use today in the industry.

In recent years, the APA has played a major role in developing industry safety standards. Requirements for backyard fireworks (common fireworks) were developed in the early 1970's and submitted to the Food and Drug Administration. Subsequently, these industry guidelines formed a major part of the Consumer Product Safety Commission regulations implemented in 1976.

Industry Standards for the Manufacture, Transportation, and Storage of Fireworks and for the Public Display of Fireworks have also been developed by APA. Both codes were submitted to the Committee on Pyrotechnics of the National Fire Protection Association, and they have evolved into NFPA Standards 1124 and 1123, respectively. We urge their adoption as federal standards.

Our goal in presenting testimony to this Subcommittee is to assure you that the legitimate American fireworks industry is deeply concerned about safety. We are heavily regulated by numerous federal, state, and local agencies. New laws and regulations are not required. Rather, enforcement of the current regulations should be emphasized, and the existing rules should be modified where safety considerations warrant changes.

THE PRESENT FEDERAL REGULATIONS

At present, federal regulation of the fireworks industry is handled by several agencies. Each has jurisdiction over a particular aspect of the industry, and jurisdictional questions have not been a serious problem to date.

The U.S. Department of Transportation regulates the movement of fireworks in interstate commerce. A significant role assigned to DOT is the classification and approval for transportation of all explosives, including fireworks. A laboratory examination is required for all new explosives to insure that the materials will be stable during shipping.

Explosives are assigned to a category, based on the expected output in bulk form. Class A explosives include high explosives such as dynamite and military explosives. Class B explosives (termed "low explosives") include many devices, such as the large fireworks (termed "special fireworks") used in public displays. Class C explosives are mostly devices containing limited quantities of Class A or Class B material. No mass explosion is expected with Class C devices in the event of a fire. The backyard variety of small fireworks (termed "common fireworks") are included in the Class C category.

The DOT regulations and the approval process adequately guard against the shipping of inherently unstable materials, and the excellent transportation safety record of explosives suggests that DOT is doing an effective job regulating explosives and fireworks. The DOT classification system also provides a basis for the structure of the regulations of the other federal agencies involved with fireworks.

The U.S. Consumer Product Safety Commission (CPSC) regulates the construction and performance of common fireworks intended for use by individual consumers. A stringent set of standards governing the chemical composition, fuse, labeling, and performance of common fireworks has been in effect since 1976, and the injury rate has dropped significantly since then. Considerable industry input was involved in the development of the CPSC rules, and we strongly support the standards as well as the efforts of the CPSC. Their regulations are an instance—perhaps unique—where an industry will readily admit that federal regulation has benefited all concerned.

The Bureau of Alcohol, Tobacco and Firearms (ATF) was assigned authority over many of the activities of the explosives industry by the Organized Crime Control Act of 1970. The intent of the legislation was to prevent the illegal use of explosives for terrorism and other criminal purposes. Any firm wishing to engage in the manufacturing, selling, or use of explosives in interstate commerce must first obtain a license or permit from ATF. The other area of responsibility assigned to ATF is the development and enforcement of regulations to prevent the improper, insecure, and unsafe storage of explosives.

ATF is currently reviewing its storage regulations, following several recent incidents at special fireworks facilities and as a consequence of a series of tests conducted in late May 1985 in cooperation with DOT and the APA. This program was designed to examine the output from various types of Class B special fireworks and their components, and was conducted prior to the Aerlex incident in June. The test results are now being examined by all of the involved parties, and some proposed regulatory changes may be forthcoming regarding storage.

ATF's jurisdiction extends over the storage of explosives but does not include control over the actual manufacturing process. The agency that does have authority over the work area is the Occupational Safety and Health Administration (OSHA).

Inspections of fireworks facilities have not received high priority from OSHA in recent years, presumably due to the small number of workers involved as well as to the better-than-average safety record of the OSHA manufacturing category that includes fireworks. Many of the inspections that have taken place followed accidents at specific plants.

OSHA's interest in the fireworks industry has increased since June and the Aerlex incident. OSHA has established a National Emphasis Program to inspect all fireworks manufacturing facilities over the next year. We support a systematic inspection program to bring all factories into compliance with established safety standards.

APA is currently participating in the development of a training program for OSHA inspectors, and we appreciate the opportunity to have input into this important area. It is crucial that OSHA establish a clear set of inspection guidelines for fireworks manufacturing facilities, so manufacturers can know what rules they are expected to comply with. OSHA inspectors must be trained under these same rules for the program to be effective.

It appears to us that there are certain areas of overlap between the jurisdictional responsibilities of OSHA and those of the ATF, which could lead to potential confusion in the industry—and possibly in the government, as well. This overlap occurs in the regulation of the storage of fireworks. We hope this issue will be clarified in the next few weeks. In any case, we intend to give our full cooperation to both agencies in this important work.

ILLEGAL FACTORIES

We do need increased help from all of the federal agencies to deal with what we perceive to be the major problem facing the fireworks industry in this country—the continuing production, distribution, and sale of federally banned explosive devices to consumers.

These devices—known as M-80's, M-100's, blockbusters, and a host of other names—contain explosive powder as much as several hundred times the legal limit established by CPSC. Many serious injuries occur each year to users of these devices, and explosions at illegal, unlicensed factories accounted for 40% of the incidents, 59% of the fatalities, and 63% of the property damage investigated by ATF for the period 1976-1984!

Clearly, additional regulations imposed on legal manufacturers will not prevent these incidents. Control of the raw materials used to produce these devices is needed. We recommend that a task force should be created to attack this problem, combining the expertise of CPSC, ATF, and OSHA personnel. Severe penalties should be imposed on persons producing and selling these dangerous devices. We offer our full cooperation in such an effort, and hope that it can be implemented before another 4th of July has been celebrated.

In summary, we are anxious to cooperate with all of the federal agencies having jurisdiction over the fireworks industry. We hope that a spirit of cooperation towards a common goal—safety for the employee, community, and user—will continue in the weeks, months, and years ahead.

Our recommendations for action that can be taken in the immediate future to improve safety in the fireworks industry can be summarized in three parts:

1. Adoption, where appropriate in their regulations, by OSHA and ATF, of NFPA Standards 1123 (Public Display of Fireworks) and 1124 (Manufacture, Transportation, and Storage of Fireworks).
2. Implementation of an inspection program of fireworks manufacturing facilities, using NFPA Standard 1124 as a guide. Inspectors should receive specific training in fireworks prior to conducting the inspections.
3. Initiation of a vigorous program to shut down unlicensed factories that are producing federally banned devices. Control of the raw materials needed to make the explosives should be emphasized.

Thank you for your attention and interest, and I will be pleased to answer any questions that you may have.

Mr. GAYDOS. Thank you, Doctor. The chair now calls on Congressman Synar.

Mr. SYNAR. I will defer to Jim Jones.

Mr. JONES. I just wondered if we had put into effect your recommendations, would that have affected the situation at Hallett?

Dr. CONKLING. I have not been privy to all the investigative details coming out of Hallett. But I would have to feel that certainly the magnitude of the incident would have been minimized if particularly NFDA 1124 had been adopted and had been enforced.

Mr. SYNAR. Doctor, let me ask you a couple of questions, if I could.

Is there any mandatory self-regulation within the American Pyrotechnic Association; in other words, does your association establish standards for members that they are required to follow?

Dr. CONKLING. The one requirement we have for membership is that a firm not engage in the manufacture, distribution of illegal or federally banned devices. We do not have requirements as far as how the manufacturing operation is conducted. We do have the standard 1124 which strongly encourages all of our members to be in compliance with, but it is not a requirement.

Mr. SYNAR. Would you support a change in the law that would require class B manufacturers to be licensed by OSHA?

Dr. CONKLING. They are currently required to be licensed by ATF. And OSHA's licensing role, in my opinion, would not be a problem. I think that many of our members would support that to try to minimize it——

Mr. SYNAR. The reason I asked that question, if they are not licensed by OSHA, how could we avoid another Aerlex from happening again?

Dr. CONKLING. Well, it is my understanding that OSHA is obtaining from ATF a list of all licensed—all fireworks manufacturing licensees. So if OSHA's purpose in licensing is to determine the location of a fireworks manufacturing facility, the present structure is adequate to provide them with that information. Licensing by OSHA may be a duplication in terms of establishing Government knowledge of the existence of a facility. If the licensing required preinspection to determine that a facility is in compliance before it begins operations, then perhaps the licensing would be a good idea.

Mr. SYNAR. So if a class B fireworks operation is licensed by ATF, then OSHA should have notice of the existence of that and——

Dr. CONKLING. The information would be available if they requested it, yes.

Mr. SYNAR. Now, according to your testimony, most fireworks manufacturers are family owned businesses. I guess my question to you is: Who should regulate these smaller businesses if OSHA does not do that? Who would you recommend?

Dr. CONKLING. Under the present regulatory structure, I don't see anyone else with the potential manpower and the potential ability to train and put into the field a group of knowledgeable inspectors. The Canadians have a system where one group, the explosives branch of their Energy Mines and Resources Department is responsible for all aspects of the explosives industry. Manufacturing, the distributing, the storage is all under one agency. In our Government, it is divided among four or five different agencies. And this may cause some confusion, and it may have created some jurisdictional gaps.

Mr. SYNAR. This morning's Daily Oklahoman reports that a U.S. Army researcher had recommended that the Federal regulatory authority for fireworks should be vested in one Federal agency to cure the inefficiency of enforcement. How do you respond to that suggestion?

Dr. CONKLING. I feel that the Canadian system, which is presumably what he is talking about, works extremely well. It is when an inspector makes a visit, it is clear that he has control over the entire facility and can inspect the entire facility, and there is never a question of is this or is this not in our jurisdiction. So I feel that there is a lot of merit in that statement, that one regulatory agency may be a good idea.

Mr. SYNAR. You have as much experience as anyone we will have today with respect to the enforcement procedures. Based upon that experience, do you think it may be important or necessary for us to review the present enforcement structure and maybe move in that direction, or do you feel that the present system just needs to be fine-tuned?

Dr. CONKLING. The present system contains everything that is needed——

Mr. SYNAR. Does it work——

Dr. CONKLING [continuing]. To adequately regulate the industry.

Mr. SYNAR [continuing]. In your opinion?

Dr. CONKLING. I think with OSHA's new involvement in the industry, it will work. I think this national emphasis program, in visiting all the fireworks manufacturers, may well be traumatic to many facilities. But it may be necessary to produce a fireworks industry that can operate its business safely and yet provide entertainment to the public.

Mr. SYNAR. It didn't work at Aerlex, though, did it?

Dr. CONKLING. There certainly appears to have been a problem there. Again, I am not familiar enough with the exact details of how that plant was laid out to really be able to state whether or not——

Mr. SYNAR. How long has this new process and procedure been in place with OSHA?

Dr. CONKLING. With OSHA? The training program will be conducted in November. Commencing January 1, I believe, they will be beginning their planned inspection of fireworks facilities.

Mr. SYNAR. Thank you, Joe.

Mr. GAYDOS. Mr. Tauke.

Mr. TAUKE. Thank you, Mr. Chairman.

First of all, Doctor, I want to thank you for your testimony.

I noticed on page 2 of your testimony that you call for the adoption of the industry standards as Federal standards. And then in the very next paragraph, you suggest that we don't need new laws or regulations. Is that a contradiction?

Dr. CONKLING. No. In that—the present regulations contain reference to most of the areas addressed in 1124, perhaps somewhat differently worded.

Mr. TAUKE. So what you are suggesting is that the regulations that are currently on the books be altered in order to reflect the standards that have already been agreed to by the industry?

Dr. CONKLING. Yes. That would be an accurate statement.

Mr. TAUKE. You have indicated also in your testimony that there is a major problem with illegal manufacturers. Can you give us any quantification of that problem, numbers of manufacturers perhaps?

Dr. CONKLING. We wish we knew where every one of these factories—many of them—the leads that regulatory agencies get regarding the location of the illegal factories comes from within our association. There are too many. But they are seasonal, they are like weeds. In April of every year, people will move into a garage, into a barn. They need three chemicals, they need tubes, they need fuse. They can set up, begin production, turn out several thousand huge explosive devices per day, cost them a nickel to make, they can sell them for $2 on the street, an enormous profit motive, regardless of the fact that one of these will blow your hand off if it goes off in your hand. We abhor these devices, and we wish that we had the ability to put them out of business, but we don't.

A vigorous task force effort by CPSC–ATF, possibly OSHA, I feel, could put these operations out of business. But it would take manpower, it would take time, and some determination has to be made that this is a serious problem, we are going to attack it, and we are going to stop it.

Mr. Tauke. Is there any way besides hunting these illegal manufacturers down and closing up the garage operations that this can be done? For example, should there be some control, perhaps, on the selling end or on the access to materials or chemicals that make these devices? Are either of those alternatives practical?

Dr. Conkling. They are distributed through an entirely different route than legal background——

Mr. Tauke. So you can't go at them from the distribution end. What about the other end, the access to the materials?

Dr. Conkling. The fuse that is needed to make them is produced by five or six factories. So regulation of the fuse is one area that should work. The three chemicals, two of which are sulfur and aluminum, are used in so many other things, it would be impossible to control that. But the third component, which is the oxidizer, potassium prochlorate, I talked to the three major distributors of the material, and they are more than willing to comply with any regulatory program that may be put into effect to control that material.

The problem is it is not enforced or not regulated by any agency at this point. ATF does not regulate it because it is not an explosive material. Only in combination with aluminum does it become an explosive. So they say they have no authority to control it.

Mr. Tauke. That may be one area that we have to look into. How many of these manufacturers have fewer than 10 employees? I am talking now about the legal ones, not the illegal ones. How many have fewer than 10 employees?

Dr. Conkling. With our association, there would be very few. But there are a number of very small operations, perhaps 40 would be my guess.

Mr. Tauke. And how many total operations do we have, legal operations?

Dr. Conkling. Probably 100.

Mr. Tauke. So about 40 percent have fewer than 10 employees. The reason that is important is because under the OSHA laws of the Federal Government, it limits OSHA to regulating employers with more than 10 employees. And so if we rely on OSHA to regulate the manufacturers of fireworks—is that the correct term, fireworks?

Dr. Conkling. Fireworks.

Mr. TAUKE. If we allow OSHA to regulate the manufacturers of fireworks, we have immediately 40 percent of the manufacturers left out. Is there any way we can deal with that problem, or are we letting 40 percent slip through the cracks because of our OSHA regulations?

Dr. CONKLING. I am not aware that OSHA has any provision where under some special program they can inspect a facility——

Mr. TAUKE. It seems to me that perhaps one of the things that the subcommittee is going to have to look into, is that immediately 40 percent of the manufacturers are left out if you rely on OSHA.

I notice that in the *Hallett* case that, as I understand, the manufacturers should have been sending records to OSHA. Does every manufacturer of fireworks products maintain records, or do most maintain records and periodically transmit them to OSHA authorities?

Dr. CONKLING. I have very little knowledge——

Mr. TAUKE. I——

Dr. CONKLING. I will amend my previous statement for a moment, though. I recall now from a talk I had with OSHA that the rule is 10 employees at all times during the year. Now, I would say a great percentage of those smaller companies on July 3 and 4, will have more than 10 employees. We did—it did occur to us that probably, I would say virtually all of the fireworks facilities—we may be down in the 10 percent or less—would not have at any time during the year 10 or fewer employees. So I think the 40 percent is probably true for 11 months of the year. But they would be covered under OSHA because for a brief period of time, they go over 10 employees.

Mr. TAUKE. Counsel is nodding affirmatively. The case that with 10 employees at any time during the year, then they would be covered.

Mr. HOLZMAN. I think so. The language in the Appropriations bill only says 10 or fewer employees. I don't think it gives any specific whether it is——

Mr. TAUKE. We will have to check with the OSHA people when they testify and see if that is presenting a problem in enforcement.

Then, just one final area of questioning. I gather you think that it would probably be helpful, though, if the enforcement of rules and regulations relating to the manufacture and sale of fireworks would be consolidated under one agency?

Dr. CONKLING. For a small industry, it would be most helpful to have just one set of rules and regulations in one book.

Mr. TAUKE. Helpful for you, the producers as well as for the Government. Now, if that were to happen, would it be the Alcohol, Tobacco and Firearms which would be the best place, or would you have a preference as to which Agency should be doing it?

Dr. CONKLING. We find them all to be very, very efficient and capable agencies.

Mr. TAUKE. OK. Now that you have given the diplomatic answer, none of those people out there will listen. What would you suggest for us?

Dr. CONKLING. ATF certainly has expertise in the field of explosives, within their explosives group. OSHA has expertise in inspection of a manufacturing facility for hazards. I would think a new group would have to be set up, possibly extracting employees from one or the other of the current agencies and bringing that expertise into whichever of these agencies would be deemed to be the appropriate vehicle. I would think OSHA, because of its structure at the present time, may be the best one to regulate fireworks manufacturing facilities. They are more familiar with the manufacturing——

Mr. TAUKE. Are you a manufacturer, yourself?

Dr. CONKLING. I am a college chemistry professor. I have no interest in any fireworks manufacturing facility itself.

Mr. TAUKE. I presume you are familiar with them, though?

Dr. CONKLING. Oh, yes. I visited——

Mr. TAUKE. If I am running an average manufacturing facility, how many times will I be inspected during the course of the year by any of these——

Dr. CONKLING. By anyone?

Mr. TAUKE. Yes.

Dr. CONKLING. My guess would be at least weekly by someone, if not more, between Federal, State, county, city, and between the transportation, storage, the employee, various employee safety groups. There are numerous inspections.

Mr. TAUKE. That is fairly impressive. Now, was Hallett an illegal manufacturer, then?

Dr. CONKLING. It is my understanding that Hallett was licensed by the State of Oklahoma, that they were producing legal class C and class B fireworks, that there was nothing illegal in any way, shape or form about their operation.

Mr. TAUKE. I guess you don't have intimate knowledge of those facts, so we will have to——

Dr. CONKLING. But that is what I have been informed.

Mr. TAUKE. I appreciate your testimony. It has been very helpful. Thank you.

Mr. GAYDOS. Congressman Jones.

Mr. JONES. It appeared from your last statement they were getting inspected well and being kept pretty honest in their safety standards. But counsel tells me that this is not just confined to fireworks manufacturing, Union Carbide and the others, if they are inspected by the local authority and they are the major employer in that area. They are very reticent about shutting them down or forcing layoffs because of the employment factor. Do you find that to be the case?

Dr. CONKLING. I would find the major problem would be training an inspector to recognize a hazard. And, of course, the other problem, any time you are dealing with fireworks or you are dealing with methalysis cyanade, employee negligence is probably a major factor in most incidents, and you get to a point where employees are required to perform a function. Regardless of regulations that you write, you can't control what the employee does. So I think many of the incidents can be traced to an employee, be it the chemical industry or whatever.

Mr. SYNAR. Let me, if I might, interject, we have a list here and you have seen the list of findings by OSHA and violations that existed at Aerlex. I think the point is obviously the local county, even for that matter, State inspection wasn't sufficient. I think what

Jim and I would like to know, how often would a Federal inspection occur in a situation such as Aerlex? Because, obviously, the local, county, and State and others didn't find these violations in their normal operating procedures.

Dr. **CONKLING**. At the present time, an inspection to identify hazards in the manufacturing process is unlikely to take place once a year.

Mr. **SYNAR**. Not even once a year——

Dr. **CONKLING**. Because at the present time, nowhere are written guidelines for inspecting a fireworks manufacturing facility. This is what I believe OSHA is intending to develop for their training program in November, and we absolutely welcome this with open arms.

Mr. **SYNAR**. Presently there is no way that we can say with any assurance that another Aerlex couldn't occur because for a manufacturing operation existing out there today, no one would really have jurisdiction to do the inspection?

Dr. **CONKLING**. I hope that following November——

Mr. **SYNAR**. But right now—

Dr. **CONKLING**. Right at the moment, there are no clear guidelines for inspecting a facility.

Mr. **JONES**. So you, again just to summarize, you agree with what Mike Synar read from the Daily Oklahoman that there should be one Federal agency with that responsibility concentrated in one Federal agency?

Dr. **CONKLING**. I think there is a lot of merit to the suggestion whether four agencies operating with clear jurisdictional assignments couldn't achieve the same level of regulatory control. I am not sure which would be—if one would be any better than the other one. But certainly to clearly establish who has regulatory authority over what area of the fireworks manufacturing and distributing industry would be a big help for the industry to clearly know who is regulating what and for the Government to have clearly established whose regulation.

Mr. **TAUKE**. Would the gentleman yield?

I don't understand. If there are no guidelines now for OSHA inspections, how does OSHA go in and inspect? On what basis do they write a violation, or how do they enforce any standards if there are none to enforce?

Dr. **CONKLING**. I will defer to OSHA on that point.

Mr. **GAYDOS**. OSHA representatives will be testifying, and I think that question would more properly be posed to their representatives.

Could I summarize from what you say that roughly 50 percent of the manufacturing of explosive fireworks of all nature in this country is legal, roughly 50 percent is illegal. Is that a fair statement of what you have said, Doctor?

Dr. **CONKLING**. No, sir; fifty percent of the incidents result from unlicensed, illegal factories. Their incident rate is exponentially higher than the incident rate at legal, established facilities. People who set up the barn—worm farm operations—

Mr. **GAYDOS**. Mom and Pop-type activities.

Dr. **CONKLING**. Well, whoever.

Mr. **GAYDOS**. Small?

Dr. CONKLING. But they are not interested in employee safety. They are out to make a fast buck in April, May, and June. They are not interested in educating the employees on how to safely mix the powder. They want to get in, set up, produce their items, get out before anybody finds them.

Mr. GAYDOS. I want the record to be accurate. Then how many of the operations in this country are, or would be classified properly as illegal operations, meaning they are not licensed by anybody?

Dr. CONKLING. I wish I could reply to you with the testimony. All we know is they are out there. They move around. They vary from location to location. There are too many of them. But we don't have any numbers on just how many there are, what percentage they comprise.

Mr. GAYDOS. Is this a fair statement, also, that the only time we receive information or knowledge of them, and they become a statistic, is when one of these illegal operations has an accident? Would that be a pretty fair statement? Outside of that, they may be operating persistently, even year-round. By the time the 4th of July comes around, in particular, they increase their activities, and afterwards they kind of like slowly decrease them. Now, is that true?

Dr. CONKLING. Fortunately, ATF is able to locate some of them before they explode, put them out of business. But we do find many of them when they have their incident.

Mr. GAYDOS. Are they like an alcohol still, moonshine?

Dr. CONKLING. There are so many analogies between the illegal alcohol industry and the illegal explosive industry, and it is a beautiful parallel.

Mr. GAYDOS. Doctor, is there any other information outside of your written testimony that you wish to emphasize at this time for the committee's purpose or for your own purposes, rather?

Dr. CONKLING. We welcome your interest in the problem in our industry. We want to work with the Government to make the fireworks and manufacturing process in the fireworks industry as safe as we possibly can. We certainly are looking for a cooperative program with OSHA, with ATF, certainly, rather than any adversarial relationship. We thank you very much for taking the time to look into our industry.

Mr. GAYDOS. Doctor, thank you very much for your forthwith type of reponses. Other questions by the panel? There being none, thank you very much, Doctor.

At this time, we would like to call the second witness listed on the schedule, William T. Earle, chief, Firearms and Explosives Division, Office of Compliance Operations of the Bureau of Alcohol, Tobacco and Firearms of the Department of Treasury. That is quite a handle you have there, Director. Do you have anyone that is accompanying you?

STATEMENT OF WILLIAM T. EARLE, CHIEF, FIREARMS AND EXPLOSIVES DIVISION, OFFICE OF COMPLIANCE OPERATIONS OF BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF TREASURY, ACCOMPANIED BY RICHARD GARNER, SPECIAL AGENT-IN-CHARGE OF DALLAS DISTRICT OFFICE, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. EARLE. Yes, sir.

Mr. GAYDOS. You also have Mr. Garner?

Mr. EARLE. That is right, sir.

Mr. GAYDOS. Gentlemen, at this time, without objection, let me make your formal presentation, as written and submitted, part of the record in these proceedings. And then you can go together in summation, anything that would serve your purposes best to accommodate our time constraints.

Mr. EARLE. If you would, Mr. Chairman, I have got a brief statement, and I would like to read that.

It is a privilege to appear before this committee to discuss the issue of safety in the fireworks industry. I will keep these opening remarks brief and will be happy to answer any questions you may have at the end of my remarks.

As I mentioned earlier, with me today is Richard Garner, special agent-in-charge of our Dallas district office who will be happy to answer any questions you may have on ATF's law enforcement efforts in the explosives area.

The Bureau of Alcohol, Tobacco and Firearms is the Federal agency charged with enforcing Federal fireworks laws and with regulating the explosives industry. ATF's authority with regard to regulating the industry centers on reducing the hazards to persons and property arising from the misuse and unsafe or insecure storage of explosive materials. Our statutory authority relates primarily to ensure safe and proper storage and recordkeeping by explosives licensees and permitees. We do not oversee the activities in the assembly or manufacturing areas of fireworks factories.

We share your concern about the number of accidental explosions which have occurred on the premises of special fireworks manufacturers. In the most recent accident on May 25, 1985, 21 people were killed and 5 injured in a fireworks factory explosion at Hallett, OK. These explosions have occurred in the manufacturing and assemblying process, which is outside of ATF's jurisdiction. However, that does not lessen our commitment to an effort to minimize such tragedies.

In June 1984, ATF published a notice in the Federal Register soliciting comments from the industry and other interested parties as to whether more effective safety standards are needed to reduce the potential hazard to the public, posed by fireworks factories. Our concern was whether the proximity of manufacturing facilities to populated areas and explosives storage magazines jeopardized the public.

During this past May, the Bureau of Mines conducted tests at Cadiz, OH, for ATF and the Department of Transportation to determine the sensitivity of special fireworks explosive materials to accidental explosion. The results of these tests showed that these materials are more sensitive than we had previously recognized.

As a result, on September 12 of this year, ATF issued a ruling which held essentially that no more than 10 pounds of flash powder and 500 pounds of other explosive materials used in special fireworks may be kept outside of an approved storage magazine and in a processing building or area during a day's manufacturing or assemblying.

We also ruled that dry explosive powders and mixtures, unfinished special fireworks, and individual fireworks articles; essentially that the materials are being processed and completed at the end of the day, must be returned to the storage magazine. This did not include the wet mixtures, only that which was completed during the day's processing.

In addition, we are in the process of writing regulations to make the industry safer, we hope, based upon our Cadiz testing and the comments received since 1984, our experience and our expertise. With regard to our law enforcement responsibilities, ATF has for several years fought a running battle with clandestine manufacturers of M-80's and other illegal fireworks. Illegal fireworks are not firecrackers, as Dr. Conkling mentioned this morning, but are classified as explosive devices subject to the provisions of the Federal explosives laws. The persons who manufacture illegal explosive devices face criminal penalties of up to 10 years and a $10,000 fine, or both. From 1978 through 1985, ATF has responded to 26 explosions of illegal fireworks manufacturing sites in which 38 people were killed and 66 people were injured.

On August 27 of this year, 20 persons were indicted in Chattanooga, TN, connected with the manufacturing and trafficking of illegal M-80's, M-100's, and serial explosives. The indictments were the result of a 2-year investigation by ATF into an illegal fireworks factory in Benton, TN, that exploded in 1983 killing 11 people.

ATF has worked closely with Federal, State, and local agencies and the fireworks industry to ensure the safety of the storage facilities and the public. We have provided all lists or information requested by them. Since 1974, ATF has had a memorandum of understanding with OSHA regarding joint areas of jurisdiction concerning fireworks manufacturing sites. In addition, the Federal Interagency Committee on Explosives, which is comprised of 21 Federal agencies, including ATF, has been meeting since 1981 to discuss common areas of concern, including safety.

In closing, I would like to say that ensuring the public's safety in the fireworks industry is of primary importance to us. A timely and coordinated response to these explosive incidents is crucial in determining the cause of the incident before we can begin to look at ways to prevent future incidents. For this reason, ATF's national response teams, since 1978, have responded to seven explosions at licensed and illegal fireworks plants. Recently our western team responded to the Hallett incident and determined that the explosion was due to an unfortunate accident in the assembly and manufacturing area.

We share the concern of the committee and others regarding the safety of the fireworks industry. We are working with other Federal agencies and the industry to implement requirements to ensure the safe handling of explosives materials in the fireworks industry and the public's safety.

Mr. Garner and I would be glad to answer any questions that you have at this time.

[Prepared statement of William T. Earle follows:]

PREPARED STATEMENT OF WILLIAM T. EARLE, CHIEF, FIREARMS AND EXPLOSIVES DIVISION, OFFICE OF COMPLIANCE OPERATIONS, DEPARTMENT OF TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mister Chairman, Members of the Committee: It is a privilege to appear before this Committee to discuss the issue of safety in the fireworks industry. I will keep my opening remarks brief and will be happy to answer any questions you may have at the end of my remarks.

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With regards to our law enforcement responsibilities, ATF has for several years fought a running battle with clandestine manufacturers of M-80s and other illegal fireworks. Illegal fireworks are not firecrackers but are classified as explosives devices and subject to the provisions of federal explosives laws. The person who manufactures illegal explosive devices faces criminal penalties up to 10 years imprisonment, a $10,000 fine or both. From 1978 through 1985 ATF responded to 26 explosions at illegal fireworks manufacturing sites in which 38 people were killed and 66 were injured.

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We share the concern of the Committee and others regarding the safety of the fireworks industry. We are working with other federal agencies and the industry to implement requirements to ensure the safe handling of explosives materials in the fireworks industry and the public's safety.

Mr. Garner and I would now be glad to answer any questions you have have.

Mr. GAYDOS. Thank you, Chief. Congressman Synar.

Mr. SYNAR. Thank you very much, Joe.

Mr. Earle, let me start off with some preliminary things. Would I be correct in saying there has been a probably 30 to 40 percent cutback in the staff in Oklahoma with ATF?

Mr. EARLE. Well, we have had a cutback in staff nationwide. I would be hard pressed right here to tell you how many people we have cut back. We recently——

Mr. SYNAR. You closed the office in Muskogee, did you not?

Mr. EARLE. Well, here again, we have got to look at the two sides of ATF. We have a compliance operations side, which are the inspectors who would normally be going to an installation like the Hallett facility. And we have special agents, Mr. Garner, who is supervisor of the Dallas district, which is responsible for the special agents in this area.

We have not experienced in my mind over the last couple years a dramatic reduction in the number of inspectors in this area. However, Dick may want to respond as far as the special agents.

Mr. GARNER. Nationwide, we have reduced from approximately 1,800 special agents to currently, we have between 1,200 and 1,300 special agents nationwide. Oklahoma did also experience a reduction in the number of special agents.

Mr. SYNAR. I am talking about 30 to 40 percent, then?

Mr. GARNER. That would be close, yes, sir.

Mr. SYNAR. Thank you very much. You are familiar with the citations that Aerlex was given by OSHA, are you not?

Mr. EARLE. Yes, sir.

Mr. SYNAR. Well, those safety violations seem fairly obvious. For example, one of the things they found is that Aerlex had tapped into a utility pole of a 440-volt line through a bare wire that was placed on the ground. There were obviously some under-aged employees within the plant. Now the ATF inspectors entered the plant more than once. Why wan't OSHA notified of these violations?

Mr. EARLE. As you may know, our inspector was at the facility in April 1985 prior to the explosion at the Aerlex facility. I do not have the written report with me about what he actually saw——

Mr. SYNAR. You have obviously reviewed it in preparation of this?

Mr. EARLE [continuing]. Outside of the storage facility. But our inspectors, quite honestly, are not trained in all of the OSHA requirements to review all of the——

Mr. **Synar**. But it doesn't take any OSHA expert to recognize such obvious violations. The question I asked you is why wasn't OSHA contacted and given these obvious violations?

Mr. **Earle**. I really can't offer you any explanation.

Mr. **Synar**. You haven't even—you have not gone to the inspector and asked him that question?

Mr. **Earle**. Yes, I have talked with the inspector——

Mr. **Synar**. Did you ask him that question?

Mr. **Earle**. And I asked him if at the time he was at the site, if he did see any obvious problems, and he said he did not. Now, you have got to understand that——

Mr. **Synar**. Does this man have 20-20 vision?

Mr. **Earle**. He is a very competent inspector. He is one of our better inspectors.

Mr. **Synar**. He is competent, and he failed to see the bare wire placed off a pole; he has missed the under-aged employees?

Mr. **Earle**. Quite honestly, Congressman, I can't speak for exactly what the inspector didn't see.

Mr. **Synar**. Is he here today?

Mr. **Earle**. No, sir, he is not.

Mr. **Synar**. Why isn't he here?

Mr. **Earle**. Well, he wasn't invited as a witness. I am here to represent the Bureau in that regard. And I do have to defend his inspection to the degree that he is responsible for inspecting the storage facility at the site. That is the limit of our jurisdiction and our law. I am fully aware that he probably did go into the manufacturing area and looked through those buildings.

Mr. **Synar**. Did he say he did?

Mr. **Earle**. Yes, sir.

Mr. **Synar**. So he—that couldn't be the excuse, that he just looked at the storage?

Mr. **Earle**. However, he is not required to look at every manufacturing building. And in all likelihood, what he did, was go to the office of the area where they might have kept the records. And in all likelihood, this wire, or this violation may not have been within his sight of view or would not have been obvious to him at that time. I am not sure where he——

Mr. **Synar**. Do you have cases where ATF has gone into fireworks facilities throughout the country and reported obvious violations to OSHA?

Mr. **Earle**. I am not aware personally of situations where we have gone in and observed OSHA-type violations and then made the referral.

Mr. **Synar**. So if there are OSHA violations, ATF probably just ignores them and expects OSHA to——

Mr. **Earle**. No, sir; we do have, as I mentioned in my opening remarks, that we have an interagency committee that meets in Washington, DC.

Mr. **Synar**. But obviously it is not working because you didn't report obvious violations here, or you can't cite to me any times throughout the country where you have cited violations and asked OSHA to come in, can you?

Mr. **Earle**. I cannot cite you specific instances where we have made referrals to OSHA, no, sir.

Mr. **Synar**. Should fireworks manufacturers be required to seek ATF approval at the plant site before construction?

Mr. **Earle**. Should fireworks manufacturers be required to come to us before they design the plant? They actually do come to us right now prior to beginning business or licensing, and prior to starting business, they must pass an inspection by an ATF inspector of the storage facility at that plant. We do not, as I mentioned earlier, get into the manufacturing facility at that site. But an inspector would have to go through the site prior to starting business to assure that the storage facilities were competent and met the regulations.

Mr. **Synar**. Now, the comparison that Joe and the former witness used with respect to ATF and finding illegal whiskey stills was an interesting comparison. ATF, as you know, has a long history of undercover work and investigative techniques to discover these types of stills and put them out of business. Does ATF have a similar program to discover illegal fireworks manufacturers?

Mr. **Earle**. I would defer to Mr. Garner for our law enforcement side to answer that.

Mr. **Garner**. I can give you some statistics to start off, and then go into just a little bit on our emphasis. From 1979 through the first 8 months of 1985, we are talking about 6 years and 8 months, we have conducted a total of 537 criminal investigations concerning fireworks. Of those 537 investigations, 471 of them were directed toward illegal clandestine-type factories or fireworks that came from these clandestine factories. The remaining group were legal fireworks factories.

Mr. **Synar**. Were those done through formalized investigations or undercover?

Mr. **Garner**. Well, in criminal enforcement, we open up a number, and these investigations all had formal numbers assigned to them. Some of the investigations resulted in undercover purchases and arrest situations. Others, if we had probable cause, would get a Federal search warrant and serve a search warrant on these factories.

Mr. **Synar**. Mr. Earle, let me go back to something. I am just—I am not going to let you off the hook here on this inspector. You say that this inspector is a competent inspector. You tell me that he was there on a number of occasions. It doesn't take any genius to go through and see the OSHA violations that were cited—to see that that would cause a reasonable person to wonder whether or not the operation was proceeding in a proper manner. You tell me that OSHA was not informed or not even put on notice. And you have told me that ATF has never turned anybody in to OSHA.

Mr. **Earle**. That is right, sir.

Mr. **Synar**. What steps are you all taking to have a better cooperation between ATF and OSHA; and can you tell me today that because of this gap that obviously exists, that an Aerlex could not happen again today?

Mr. **Earle**. Well, I can tell you today after what has happened in Hallett, OK, and other situations, we have a very thorough relationship with OSHA, where we are talking to them regularly. We will be participating with OSHA at their training institute in Chicago and training their inspectors and industry personnel.

I cannot tell you this morning that we will not have another fireworks factory incident. The nature of the fireworks industry is such that people who are engaged in that business are at risk, as Dr. Conkling mentioned this morning. The chemicals basically are unstable chemicals, and they are intended for burning and exploding. That is the reason they are manufactured.

I think through us cooperating with OSHA and other Federal agencies, we can mitigate the results of any future accidental explosions.

Mr. SYNAR. That hasn't been the case in the past, has it?

Mr. EARLE. I would not take that as fact. We have had very successful relationships with OSHA and other Federal agencies.

Mr. SYNAR. But you are not passing on any information or obvious violations to OSHA, so that cooperation is only minimal, isn't it?

Mr. EARLE. Congressman, all I can say is that I have—do not have personal knowledge of those situations where we have made referrals. We may very well have made referrals to OSHA that I am not aware of. I do know that OSHA has obtained lists from ATF in their district in the Chicago area and has initiated a program prior to the Hallett incident of inspecting fireworks factories.

I also know that our inspectors and coordinators in other States, California, and elsewhere, are participating with State OSHA's, where the States have taken over OSHA responsibilities to sit on task forces to identify these dangerous situations, and that has been working in several places for the last 1½ or 2 years.

Mr. SYNAR. Let me ask you, were there any storage violations?

Mr. EARLE. There were minor recordkeeping and some housekeeping violations at the Hallett facility during the inspection in April. Those were corrected by the proprietor after the inspection by the ATF inspector. I would point out that the storage facility at the site did not explode. The blast did not originate in the storage facility. As a matter of fact, we have no evidence of ever having an incident occur in a storage facility that is under our jurisdiction.

Mr. SYNAR. Was there any violation within the plant itself on storage?

Mr. EARLE. No, sir; the areas that were under our regulation, that were inspected by our inspector, were documented. And as I mentioned earlier, he does not even have legal access to the manufacturing area under the rulings that we have passed. We did not get into those for the purpose of inspecting them.

Mr. SYNAR. Is it a violation that stars and black powder were stored in a metal trashcan under ATF?

Mr. EARLE. Typically what happens, if the inspector would be in that area and identify them to the manufacturer, he would point out that those materials are in the process of manufacturing and, as such, are outside of the bounds of our authority.

Mr. SYNAR. But the way OSHA cited them, they were stored and they were in the process of manufacturing——

Mr. EARLE. That is correct.

Mr. SYNAR. Is that a violation?

Mr. EARLE. It is a violation today.

Mr. SYNAR. Was it cited?

Mr. EARLE. No, sir, it was not a violation at that time.

Mr. **SYNAR**. Not very competent, was he?

Mr. **EARLE**. Well, again, I would have to defend the inspector in that he did not have any authority at that time to cite the manufacturer for that type of situation.

Mr. **SYNAR**. So, the way you are getting off today, at least ATF is getting off their responsibility, is that you are telling me that you didn't have the requirements, so that is why—because you didn't have the requirements—they didn't pass the information on to OSHA, and at that time those weren't violations?

Mr. **EARLE**. What I am saying today is that we felt we had a relationship with OSHA through our interagency committee in Washington.

Mr. **SYNAR**. What good does it do to have an interagency relationship in Washington when you need it down here at Aerlex?

Mr. **EARLE**. I would be——

Mr. **SYNAR**. That is not going to do any good, that you all are across the street from each other and talk.

Mr. **EARLE**. What we were hoping to do is on a nationwide basis to alert every other Federal agency that sits down in that committee of the dangers that exist in the fireworks industry, and those meetings would meet four times a year. The idea is to pass along this information and incidents to those agencies. I cannot speak for OSHA about how that information is then processed or passed long.

Mr. **SYNAR**. Why are you waiting for a meeting?

Mr. **EARLE**. Pardon?

Mr. **SYNAR**. Why are you waiting for a meeting to get all this set up? Isn't it obvious that there are gaps there?

Mr. **EARLE**. We have had several meetings already. The meetings I was alluding to is the fact that we will be participating within the training, their inspectors and our inspectors in Chicago. I met with OSHA, I will be meeting with them again next week. We have passed on all the lists already of the fireworks——

Mr. **SYNAR**. Does ATF have any rules and regulations concerning the training of employees involved in storage?

Mr. **EARLE**. Yes, sir; we train our inspectors and our agents in basic training.

Mr. **SYNAR**. I mean, the people who are dealing with fireworks themselves? When you go in and do an inspection do you have to check the qualifications of the employees?

Mr. **EARLE**. We do not engage in a program of training citizens who are operating fireworks.

Mr. **SYNAR**. I am not asking you that. I am asking you when you go in to make an inspection of your area of jurisdiction, is the issue of the qualifications of the people handling the storage in a facility a part of the inspection?

Mr. **EARLE**. No, sir; we do not look to the qualifications of those individuals.

Mr. **SYNAR**. How do you know whether or not the people are qualified to do what you have got to require them to do?

Mr. **EARLE**. What we are looking at is the storage of the materials themselves. In other words, we are not looking at individuals and how they are manipulating their materials, because that normally happens in the manufacturing process.

Mr. Synar. How can you be assured that the storage is done properly if you don't ask about the qualifications of the people?

Mr. Earle. Well, typically, we look at the facility itself and we look at the materials——

Mr. Synar. Are these surprise inspections or notified inspections?

Mr. Earle. We normally notify the proprietor.

Mr. Synar. So, they can run out there and get it all straight regardless of whether they normally do it in a proper manner or not, couldn't they?

Mr. Earle. That's true. However, we don't limit ourselves to those. If we suspect there is a problem——

Mr. Synar. Percentagewise, how many unnotified inspections do you have?

Mr. Earle. I would be hard pressed to give you a breakdown of the percentages. I would say our vast majority are notified inspections.

Mr. Synar. Ninety percent?

Mr. Earle. Again, I would be hard pressed to say it is 90 percent or 75 percent. It is a majority.

Mr. Synar. Thank you, Mr. Chairman.

Mr. Gaydos. Chief, you say that ATF's responsibility is primarily directed at storage of high explosives. Does that mean that when an inspector visits a fireworks manufacturing facility the only places inspected are the storage bins?

Mr. Earle. An inspector typically will only go to the storage facilities on that premises. An inspector may be in the other areas. If, for example, he is walking by there, goes through there with a proprietor and records are stored in an area where the office may be adjacent to the manufacturing facility.

Mr. Gaydos. When he goes into a plant doesn't he walk up and down the aisles and look at this workplace and that workplace? How impractical can you get? Does he or doesn't he do that? Are you trying to cover something up?

Mr. Earle. No, sir; he doesn't——

Mr. Gaydos. Let's make a full disclosure. Wouldn't he do that? Wouldn't he walk through a whole plant as a practical matter?

Mr. Earle. I would say that most inspectors would not be walking through the manufacturing premises——

Mr. Gaydos. Why not? There would be areas—there would be materials stored at a workplace. That's in your jurisdiction. Why wouldn't you walk into a plant and pass an assembly line?

Mr. Earle. Mr. Chairman, we have recognized that as a problem.

Mr. Gaydos. You should do that.

Mr. Earle. What we have done is we have passed a ruling which I have alluded to in my opening remarks which now says that fireworks manufacturers cannot store in a manufacturing facility. We recognize that as a problem. We see that as a difficulty. What we have said is that we do not want the manufacturing facility to be used inadvertently as a storage facility. Again, I should point out that our authority runs the storage. The Organized Crime Control Act of 1970, chapter 11, which is essentially the explosives law, mandates us to look at the safe and secure storage of explosives. It doesn't give us any authority to get into the manufacturing.

Mr. GAYDOS. I am not talking about getting into the manufacturing. You are looking at the storage of explosives materials and say—take one item, black powder, if they are using it. If it is a workplace or a workbench or something, you are an inspector and you are looking at it, wouldn't you walk through and take a look at it?

Mr. EARLE. Mr. Chairman, I would suspect that inspectors have done that in the past. And our inspectors are normally curious kinds of people, probably want to do that.

Mr. GAYDOS. You fellows have been meeting down there with OSHA and other agencies on this interagency activity since 1981. Has your department made a request that your inspectors at least get a rudimentary type of exposure to OSHA inspections and know a little bit about it? What have you been doing for the last 4 or 5 years?

Mr. EARLE. We admit that our inspectors are not trained in every aspect of OSHA regulations, EPA regulations or other types of agency regulations.

Mr. GAYDOS. I know you have admitted that. But I am asking about whether or not somebody has made some suggestion, as my good friend Mike has pointed out, to do something about it, to have that inspector at least be familiar with how a workplace functions.

Mr. EARLE. Our intentions——

Mr. GAYDOS. Is that too impractical for you?

Mr. EARLE. No, sir; our intention is to incorporate into our training at least a review of what OSHA requirements are so that if an inspector does see those kinds of violations, we can make a referral. However, I think our primary emphasis is to try to get some leverage in fireworks factories so that we can get into the manufacturing process. Right now we have passed a ruling which says that you can't store in a manufacturing area, which would mean that an inspector would go in to check that there is appropriate storage. But in the incident you mentioned before about black powder, very likely if an inspector would go in and mention to a manufacturer that he had black powder storing, the manufacturer would tell them that it's none of his business, because that's in process, and we do not have any——

Mr. GAYDOS. You had no limitations before on the number of pounds of explosive material or flash powder that may be kept outside of an improved magazine and in a processing plant or area?

Mr. EARLE. No, sir.

Mr. GAYDOS. Why are you so reluctant to state that you are angry and disappointed that they are cutting back your personnel? I would be screaming if I were you. You admit to a 30-percent cutback and you take it so nonchalantly. Do you think that the use of the agency or the utility of the agency is not diminished by a 30 percent cut? Is it justified, or should you be asking for more agents?

Mr. EARLE. I'd be——

Mr. GAYDOS. Are you afraid of being reprimanded?

Mr. EARLE. No, sir; I'm not afraid.

Mr. GAYDOS. You lost 30 percent. Aren't you concerned? What have you done—could I ask you a question? It's not a secret question here in front of all our people in the committee. What have you done about it as a responsible public employee and in discharging a very, very sensitive jurisdiction and position? Here you have had so many agents, 1,500 or something like that, and you got cut down 30 percent How do you complain? Did you complain to the Office of Management and Budget, or what have you done?

Mr. EARLE. I can assure you that my boss and the director have been very boisterous about wanting to have more resources for our job. I can tell you what we have done in the compliance side in the area of cutbacks. We have rearranged our priorities and we inspect those things which we think are most important. Fireworks and explosives regulations are a high priority with us. That's why we inspect each of these facilities at least once a year.

Mr. GAYDOS. Chief Earle, let me tell you something. I have been in business a long time, and all I hear are priorities all the time. Rearrange priorities. That goes through all the agencies in the Federal Government. And you are using the same type of descriptive language. Rearrange priorities. In the meantime, this is what is happening. Can I ask you this opinion or this question: Do you see any real results occurring in the immediate future as far as these interagency cooperative activities, and if you do, why? Because nothing—I want to emphasize nothing—has come to light in the last 4 or 5 years as far as cooperation. We see nothing on the committee.

Mr. EARLE. I could point out one area that we are—just last year, which is in the area of explosive safety and training. We produced the training film and videotape for our inspectors which identified explosive materials and the safe way to do inspections. We think that——

Mr. GAYDOS. You just had the training film put together and made and now you expose your inspectors to that. It hasn't been done before, has it?

Mr. EARLE. No, sir; this was in 1984, prior to any of these incidents that we did that. We distributed that to the interagency committee, and that material is used throughout the government as far as the training package goes. I think we have also alerted everybody on that committee to some of the hazards in the industry, not only the fireworks industry but the high explosives industry that's also under our jurisdiction. Obviously, we can always do a better job, and we would like to do that. We would like to have more people to do a better job. I don't want to sit here and tell you that we don't want more resources.

Mr. GAYDOS. Here I am trying to get more agents for you, and you are very reluctant to——

Mr. EARLE. If I could, let me let Mr. Garner respond on the agents' side of the house.

Mr. SYNAR. You are sitting here telling the chairman and myself all the great improvements that you are making, the better cooperation with OSHA. You don't have any more legislative authority today than you did before Aerlex, do you?

Mr. EARLE. We do not. You are right.

Mr. SYNAR. So why didn't you do it before?

Mr. EARLE. Quite honestly——

Mr. SYNAR. Why is it taking something like this to do something which I think Joe and I have told you is so logical, so reasonable, that any normal operating inspector would have done it? You don't have any more authority today than you did before Aerlex, and now you are doing all this stuff. But what bugs me, is that you are saying it wasn't within our requirements or policy. Now it is. Now it is. You don't have any problem going into that area. My question to you is: Why has it taken this long to do that?

Mr. **Earle**. Obviously, the Aerlex incident is a serious and tragic situation and prompted us to work a little bit harder on an area we were already changing. As I mentioned in my opening remarks, we had been doing the tests of fireworks material that had never been done before in May of this year. The Hallett situation happened in June. We were in process and we had all this—the normal regulatory process to change since June 1984. So we were in the course of changing how we look at manufacturing and how we separate those buildings from the storage areas. It's unfortunate that the Hallett situation took place and obviously prompted us to work more expeditiously to get things changed. But it is not that that is the only incident that forced us to change.

Mr. **Gaydos**. I would like to tell you that as a matter of record, I have always tried to make a sincere and authentic attempt to try to help our various bureaus and agencies in the fulfillment of their obligations and duties. But, unfortunately, every one of our agencies that have appeared before us are always in a protective device. They think that the committee is trying to harm their reputation.

On a simple matter as to personnel, whether you need them or not, how can we as individual Members go to our colleagues at budget time and raise all the storm over the fact that you don't have enough agents if you people yourself, you don't come before us and say, look, I need those agents so desperately? We're frustrated, I want to tell you, and you are probably going to have less agents coming up. Probably be subjected, probably unjustly, to broad criticism. That is what bothers me, and I can't understand it. I guess I can only hope to be able to. Mr. Tauke.

Mr. **Tauke**. Thank you, Mr. Chairman. Mr. Earle, first I want to commend you for your restraint. It is, of course, not you who writes the laws that has 4 or 5 different agencies inspecting fireworks manufacturing, sales, distribution, and so on. It is the U.S. Congress that does that. It is not you who decides how many agents you should have or how much money you should get in your budget, it's the U.S. Congress that does that. And you haven't pointed that out, so I thought I would do that for you.

But there are some things that you do in your agency. One of them is determine what kind of cooperation there will be between OSHA and BATF. Let's explore that area first, which has been explored a little bit already this morning.

As I understand this incident at Hallett, you people were inspecting that facility, OSHA didn't even know it existed. Now, it would seem to me that the most basic and fundamental first step in cooperation would be to decide that if the plant were on your list, that it would get on OSHA's list. Have you gotten to the first step?

Mr. **Earle**. Yes, sir.

Mr. **Tauke**. When did you get to the first step?

Mr. **Earle**. Obviously, I can't tell you that step took place before Hallett because it didn't. It happened after Hallett. We provided the full list of all licensees to OSHA after that incident. However, I don't want to be hiding behind some bureaucratic facade by saying we have the interagency committee. I do want to point out that the incident rate in fireworks factories was brought up to all the representatives of that committee every year since we have been meeting on a regular basis. The availability of the list was provided to all of the people on that committee, including the OSHA representative. And in OSHA's defense, they have even started programs in parts of the country to address inspecting fireworks manufacturing facilities. It just so happens that that was not started in this part of the country.

Mr. **TAUKE**. Let me see if I understand that correctly. Are you saying that prior to the Hallett incident, the Bureau of Alcohol, Tobacco, and Firearms was giving a list of all the facilities you were inspecting to OSHA?

Mr. **EARLE**. We were not sending lists unsolicited to agencies. What we were doing was discussing with them problems in the fireworks industry, making them aware that the lists were available.

Mr. **TAUKE**. So you made the lists available to them, but before that, OSHA never requested the lists?

Mr. **EARLE**. No, sir, not a nationwide list to my knowledge.

Mr. **TAUKE**. Do they request a nationwide list now?

Mr. **EARLE**. Yes, sir.

Mr. **TAUKE**. Do you get a list from OSHA?

Mr. **EARLE**. We do not get a list from OSHA of fireworks factories because we presumably have all of the fireworks factories since we licensed them. They can't operate without our license.

Mr. **TAUKE**. Wouldn't OSHA assume that they had the list since they can't manufacture without OSHA's permission and inspection?

Mr. **EARLE**. It would seem to me that they——

Mr. **TAUKE**. Somebody is losing their microphone there.

Mr. **EARLE**. They could manufacture without having officially notified OSHA as far as my understanding of the way the laws are written. Their first prerequisite is that they have an ATF license. Then, that we would provide that license to OSHA, and have provided, and will provide——

Mr. **TAUKE**. Might I respectfully suggest that, in this age of computers and high technology, that there ought to be some way that the agencies as a first step would be able to match lists so you could all make sure that what you know, the other person knows? Doesn't that seem to make some sense?

Mr. **EARLE**. As I understand the agreement, what we will be doing is we will be exchanging our inspection results at these inspection sites, and in fact, meeting and discussing before inspections are made to compare notes and compare our experience at the facilities.

So, I would imagine that if OSHA goes in and has an inspection, after the inspection, they are going to let us know what they found. If they found or suspect any ATF violation, we are going to pursue those. If we inspect and find what we perceive to be OSHA violations, we are going to refer those to OSHA.

Mr. **TAUKE**. That is the new memorandum of understanding?

Mr. **Earle**. It is not in writing right now, but it will be.

Mr. **Tauke**. OK. At the current time, however, there is no formal or informal mechanism for transferring information of this kind from one agency to another?

Mr. **Earle**. There is an informal relationship set up in that our regions and our regional directors are aware of the need to meet with OSHA personnel. And, I believe OSHA is doing the same thing. Informally, at least, we have that understanding between us.

Mr. **Tauke**. Going back to when these lists were available, to wrap up that portion of it, is there any reason that you know why OSHA would not have asked for a list of manufacturers?

Mr. **Earle**. I would——

Mr. **Tauke**. We are obviously going to ask OSHA about that.

Mr. **Earle**. The only thing I could surmise was that possibly the individual who had been on our committee was not tuned into that particular need of OSHA. I really don't know why they would not have asked. They have received a list in other parts of the country, but not the national list. So, obviously, they were interested in a fireworks program in some parts of the country, but did not get our national list.

Mr. **Tauke**. In this inspection business, obviously, there have been some problems. You go in and inspect storage facilities, it has been relatively unclear how we define storage from the comments that have been coming along here. As a professional in this business, do we have a problem with the law?

Mr. **Earle**. The law could be expanded, obviously, to include specifically manufacturing operations. However, I believe it was the intent of Congress to limit our jurisdiction only to storage.

Mr. **Tauke**. Does it make any sense for—forget about what Congress intended. Does it make any sense to have one person inspect storage and a second person come and inspect manufacturing?

Mr. **Earle**. Probably, you know, if you are looking at it—you are standing back looking at it, it would not make sense to have two or three different agencies coming in as Dr. Complan alluded to.

However, just looking at resources, OSHA obviously has got some very good technical expertise in worker safety. ATF's expertise in the area of what bona fide storage is. I think if we can mingle those qualities well and cooperate effectively together, we can accomplish what we set out to without necessarily creating another agency or separate entity.

Mr. **Tauke**. Is there any reason why you should not inspect manufacturing—disregarding the resources argument. Assuming you had the resources there, is there any good reason why you should not provide good inspection of storage and manufacturing?

Mr. **Earle**. If there were regulations. What the Federal Government is interested in, perhaps, is the formulation of explosive materials or compounds or what took place in the manufacturing area, we would be the right agency for it and do that.

Mr. **Tauke**. Now, I don't understand how you determined what is a facility, what is storage, and what is manufacturing. If I am walking into a facility, I would assume that there might be storage in place.

How do you determine where there is storage and where there is manufacturing?

Mr. **Earle**. Essentially, we would look at the nature of the operation. If the manufacturing building is designated a manufacturing facility, that is in fact what is going on in that building, then we would not——

Mr. **Tauke**. It is not in your jurisdiction. What if you saw a few barrels there in the manufacturing plant? Is that storage if the manufacturer didn't have facilities and said, no, that is manufacturing in there. That is not your area. Do you have the authority to go in?

Mr. **Earle**. If he cites that as an in-process situation, in-process and manufacturing, we would have to take him at his word.

Mr. **Tauke**. Even after the September 12 regulation——

Mr. **Earle**. I am pointing to——

Mr. **Tauke**. Pre-September 12, you would say, well, looks to us like it is storage, but you said it is manufacturing, so we have got to take your word, that was your legal——

Mr. **Earle**. Yes.

Mr. **Tauke** [continuing]. Position? OK. Now, with the regulations, you are able to say, I want to go in and look at that.

Mr. **Earle**. That is correct. We wouldn't do that. We would say—look at the quantity for one thing and if those barrels of components consisted of 500 pounds of explosive mixtures or some flash powder, he would be in violation of our rule.

Mr. **Tauke**. Where you don't see barrels, but you see pallets in the manufacturing building over there and you all went to look to see how much was stored in there and he has stored——

Mr. **Earle**. What we can do is go and determine if he is exceeding the limits that we placed on him.

Mr. **Tauke**. Then it makes less sense than ever to have two inspectors, it seems to me——

Mr. **Earle**. ATF would be looking at the processes, the materials, and those sorts of things. OSHA obviously is looking at worker safety, looking at how—and, I think we do have regulations coming for hazardous, toxic substances. We would not be looking at that——

Mr. **Tauke**. Well, I think you have made some progress, but let me say, I think it is obvious there is a ways to go. And, sharing the basic information about who you are inspecting is certainly helpful.

It seems to me there is a long way to go in sharing basic information, and I certainly hope you move forward in an aggressive way in sharing notes on a routine basis, one inspector going in and sharing notes with another inspector.

Although my view is as it appears, that we ought to have one visit inspection.

Mr. **Synar**. Couple of questions for clarification. Today you can go in. You could have back prior to today, could you not?

Mr. **Earle**. We could have had access.

Mr. **Synar**. So the real issue, could you all go in?

Mr. **Earle**. The issue is that today we have authority——

Mr. **Synar**. You had authority back then, did you not?

Mr. **Earle**. We had authority to get access to the building, but if we saw those drums on the side prior to our ruling, we could not cite the manufacturer for storage.

Mr. **Synar**. It wasn't that they gave you more legislative authority, you just came up with a new rule?

Mr. **Earle**. No, sir; you are correct. Congress did not give us——

Mr. **Synar**. So your testimony today that we could not go in is really improper. The proper answer is, today we *will* go in.

Mr. **Earle**. If you look at the way Congress——

Mr. **Synar**. I want everyone to hear that very clearly—you had the same ability to do what you are doing today back prior to Aerlex and you didn't do it.

Mr. **Earle**. Well——

Mr. **Synar**. Yes or no?

Mr. **Earle**. Certainly, the particular time I would like to address is that prior to the ruling of September 12, we did not have authority to go cite the manufacturer for temporary storage.

Mr. **Synar**. But you could have done that before the ruling back in January, too, couldn't you?

Mr. **Earle**. We were in the process of changing our regulations and rulings at that time.

Mr. **Gaydos**. Chief, I will tell you most certainly, the committee has been into many areas and we have always found a reluctance of admission when things go wrong—in the coal mine disasters, the silver mine disasters, explosions down there in the grain elevators.

So, please, I don't want you to interpret Congressman Synar's inquiry or questions along the line that he is trying to put you on the spot because that is just a natural phenomenon that happens in agencies.

They do not do certain things until a catastrophe occurs. And I have to give you credit on your interagency committee. At least you are doing something about it now. You shouldn't have a reluctance to try to justify why you hadn't been doing it before because the committee is not green. This committee has a few thorns on it. We are just trying to get down to the fundamental things and to try to help, we are trying to rectify the situation.

Mr. **Tauke**. Apparently, you had the statutory authority, but you didn't exercise it until September 12 is the bottom line?

Mr. **Earle**. If you want to put it that way you can.

Mr. **Gaydos**. I think that is accurate.

Mr. **Tauke**. Now, the question is whether or not we should change the statutory authority to have instead of encouraging you to have all the interagency cooperative agreements, to have one agency which would do the whole thing and that goes back to my next line of questions relating to the illegal manufacturing which I suspect is a problem waiting to happen.

How many illegal manufacturers have been—how many people have been convicted in the last 5 years for manufacturing illegal fireworks?

Mr. **Earle**. That is getting into a topic that I would defer to my colleague.

Mr. **Garner**. I would like to back up, if I could, for just 1 minute on the question of the right to go into the manufacturing facility and see if I can maybe clarify one point I see that is coming through all the way. There is some concern among our legal people, our legal counsel, that the new ruling may not stand up. And it basically goes back to the definition of the statute of explosives, and the definition of explosives under the statute, it requires the explosive to function by means of an explosion. And this particular case, the stars were more defined as something that would burn prior to the explosion, and whether or not they would come under the definition—there are two definitions of explosives basically in the statute.

The one that is the regulatory side of it, that has to do with the generic type explosives. The other was a more broad definition defined over in 844J, which is broad to include like gasoline. In fact, in the—when the act was passed even in the hearings, they had some discussion on whether or not you would license gas stations. And they exempted those from the regulatory portion of the statute.

Mr. TAUKE. Are you saying that you may not have statutory authority for your September 12 regulation?

Mr. GARNER. There is some concern among our counsel that in fact it may not stand up because some of the materials may not fall within the definition——

Mr. TAUKE. Could you submit to the subcommittee an explanation from your legal counsel as to what the problem might be?

Mr. EARLE. Yes, sir.

Mr. TAUKE. Now, my question about number of convictions in the last 5 years.

Mr. EARLE. I will have to also get that for you. I know we have had several convictions, arrests, convictions, and seizures in the past few years. And I will be glad to provide that to the committee.

Mr. TAUKE. I noticed your inspection numbers were from 1979.

Mr. EARLE. Yes, sir.

Mr. TAUKE. How about from 1982? Has it been fairly steady each year from 1979 on, or has the number dropped?

Mr. EARLE. Each year—and I can speak for now the Dallas division, which includes northern Texas, all of Oklahoma and new Mexico. Prior to mainly the Fourth of July, we are inundated with calls concerning people that have these illegal fireworks factories. And we consider it a very high priority. And we actively work them. Just a few months ago—in fact, we seized an illegal factory down in Ft. Worth.

Mr. TAUKE. Let me be more specific. Is the number of inspections since 1979 increasing each year, decreasing each year, or is there any pattern?

Mr. GARNER. We inspect fireworks factories at least once a year. We are probably getting into an area that revolved around our demise sometimes——

Mr. TAUKE. Just 1 second. When you cited your statistics, you cited them from 1979. Now, I am a Republican. I like the President. What I want to know is during the last 5 years has that number gone up or has the number gone down? Are you doing more, or are you doing less? I am getting suspicious when people come in and cite figures from 1979. I want to know what is happening in the last couple of years.

Mr. GARNER. The total number of inspections for all of the work that ATF does, and I want to include firearms and alcohol, and all that sort of thing, has gone down since we started——

Mr. TAUKE. What about fireworks?

Mr. **Garner**. Fireworks, we have maintained by realining priorities to do at least one a year. Now, if we have more inspectors, we probably——

Mr. **Tauke**. I am talking——

Mr. **Garner** [continuing]. Illegal——

Mr. **Tauke**. Where is the number you cited—the number of illegal——

Mr. **Garner**. You are asking instead of inspections, you are asking, I believe, sir, the number of criminal investigations.

Mr. **Tauke**. That is the statistic you cited. I am sorry.

Mr. **Garner**. I think I can make you happy in talking about our overall enforcement efforts. We just got our fiscal year 1985 totals for fiscal year 1985 which ended September 30. And bureau-wide in all our criminal activities, we had a 43-percent increase overall in the number of criminal cases. These are cases that are made and presented to the U.S. attorneys for prosecution. And the Dallas district alone, which includes all of Oklahoma, again, we experienced a 66-percent increase in the number of criminal cases perfected by our special agent.

Mr. **Tauke**. Let me ask one more time. The number of investigations, or whatever the terminology is, of illegal fireworks manufacturing or processing activities, can you tell us how many you would have had in 1985 in comparison to 1982 and 1979?

Mr. **Garner**. Yes, sir; I can get you a breakdown of each year from 1979 through the current. I don't have that with me, but I will provide it to you.

Mr. **Tauke**. If you can give me an indication of the trends.

Mr. **Garner**. Yes, sir.

Mr. **Tauke**. Up or down.

Mr. **Garner**. I believe in 1982, I was in our Bureau headquarters from 1979 through January 1984. And I was in the Explosives Division. I believe our increase in fireworks activity would have been in probably 1982 or 1983. We had a particular problem up in the Ohio area. But I can get you that information and break it down on a year-to-year basis.

Mr. **Tauke**. I thank the gentleman. I look forward to that information.

Thank you, Mr. Chairman.

Mr. **Synar**. Just one more, if I could, Mr. Chairman.

Under your new ruling, 8513, you would now inspect for storage no more than 10 pounds of flash powder, 500 pounds of explosive materials, in the manufacturing area, correct?

Mr. **Earle**. Yes, sir.

Mr. **Synar**. Do you know how much powder there was in the Aerlex manufacturing area?

Mr. **Earle**. I do not.

Mr. **Synar**. Isn't it your job to estimate that?

Mr. **Earle**. The response team may have some numbers in their report, but there was such devastation at that site——

Mr. **Synar**. What about the inspector who was competent that was in there, what did he estimate?

Mr. **Earle**. He was not in the manufacturing premises to do an inventory of what was there. He can only make an estimate of what was in their storage.

Mr. **Synar**. Let me tell you something. What bugs me about the way you have testified here today—do you know where Hallett is?

Mr. **Earle**. Yes, sir.

Mr. **Synar**. When you get to Hallett, it is a long ways from anywhere. You had to go out and search to find this place. This is not what you call easily accessible. A competent inspector goes out there and he had to want to go out there. And I would seriously doubt that he went out there and spent 5 minutes and left. Wouldn't you agree?

Mr. **Earle**. Yes, sir, I would agree.

Mr. **Synar**. All right. He probably spent probably the morning or the afternoon or even maybe a whole day. Now you are telling me that in none of the reports that you have, did he estimate that kind of powder that was in storage in the manufacturing area?

Mr. **Earle**. Yes, sir; he did estimate what was in the storage facility, but did not report it in his report, as I recall, anything about what was in the manufacturing facility.

Mr. **Synar**. Thank you, Mr. Chairman.

Mr. **Gaydos**. Chief Earle and Agent Garner, I want you to understand, if you would, it is not the purpose of the committee to call you in here and badger you. But it is the purpose, and always will be, that we must glean the facts from accusing situations. And many times it might be misinterpreted. There is nothing here that is designed to embarrass anybody, or any agencies.

We know the limitations. Again, I have to say that we have been in the business awhile and we know what your budget limitations are and where you have to respond and how exigencies occur which you have no control over. But certain fundamental things aren't occurring.

The committee is sensitive to it. I think that in private or otherwise, you have to conclude that that is the case. As responsible Government officials serving the taxpayers as a committee does, we would expect you in all sincerity to discharge your obligations and duties, you know, with more than just candor, with dedication, which I think you do.

I want you to know we are here to try to help you. This is primarily what our reason is here, to try to help the situation, that in turn would help you. So I don't want to have you leave with a misunderstanding or misimpression of what is the ultimate objective of this committee.

I want to thank you for appearing before us and for being as truthful as you can under the circumstances and responding to us as factually as you can. We all, I am sure, agree and hope that we might come up with a solution.

Mr. Tauke has asked for some information. I think it is imperative that the committee has it. It is very sensitive. And should our counsel or any of the members put together a set of interrogatories, we would expect you to respond as soon as you can and as accurately as you can. Is that a fair arrangement?

Mr. **Earle**. No doubt about it.

Mr. **Gaydos**. Thank you for coming.

Mr. **Tauke**. Which committee in Congress has jurisdiction over the Bureau of Alcohol, Tobacco and Firearms, and the statutes which you operate, do you know?

Mr. HOLZMAN. Postal and Treasury.

Mr. TAUKE. Postal and Treasury. Post Office and Civil Service. The only thing that is worse than the set-up sometimes in the Federal Government in trying to figure out which agency is running the show is trying to figure out which committee of Congress is running it.

Mr. GAYDOS. Thank you very much for your appearance.

Mr. EARLE. Thank you.

Mr. GAYDOS. The Chair would like to deviate from the next witness because one of our members must leave. So with that understanding, I would like to call at this time our old friend who has appeared before the committee many times, Mr. John B. Miles, Jr., Director of Field Operations, Occupational Safety and Health Administration, who has brought with him a battery of attorneys and accountants and members of the staff.

So welcome, gentlemen. I am sure you know the procedure and you may proceed in a manner that best suits the agency's purpose.

STATEMENT OF JOHN B. MILES, JR., DIRECTOR OF FIELD OPERATIONS, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ACCOMPANIED BY GILBERT SAULTER, REGIONAL ADMINISTRATOR, DALLAS; AND BILL WHITE, AREA DIRECTOR, OKLAHOMA CITY

Mr. MILES. Mr. Chairman, and members of the subcommittee, thank you, again, for the opportunity to describe OSHA's investigation of the explosion and fire at the Aerlex Corp. in Hallett, OK, on June 25, 1985, and to discuss with you our efforts to ensure safe and healthful working conditions in plants that manufacture fireworks.

On my left, I have Mr. Gilbert Saulter, who is our regional administrator, out of Dallas who covers the State of Oklahoma plus four other States in this region. On my right, I have Bill White, who is our area director from Oklahoma City who covers the State of Oklahoma and who was responsible for the investigation into the Hallett tragedy.

Before I begin, I would like to discuss OSHA's authority in fireworks plants. As you know, section 4(b)(1) of the OSH Act precludes the agency's enforcement of standards for working conditions over which other Federal agencies exercise statutory authority. The purpose of this provision is to prevent OSHA and other Federal agencies from duplicating regulation of the same hazards.

The Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms exercises statutory authority for the licensing of manufacturers of explosives and has issued regulations for the storage of explosives, including fireworks.

Under the provisions of section 4(b)(1), OSHA must confine its enforcement efforts to working conditions not addressed by the ATF regulations. In practice, this means that OSHA's enforcement of standards at fireworks plants is limited to working conditions associated with the manufacture and assembly of fireworks, and any temporary storage associated with the production process.

Now, I can tell you about OSHA's investigation at Aerlex. On the morning of June 25, an explosion and fire at the Aerlex Corp.

razed most of the structures on the 40-acre site. Within 4 hours of the initial blast, an OSHA team consisting of the Area Director of the agency's Oklahoma City area office and three compliance officers arrived at the site to begin an inspection.

Two compliance officers from our Chicago region later joined the inspection team. One of the compliance officers was an expert in the field of ordinance. All members of the team had considerable experience in conducting inspections at fireworks plants.

Much of the physical evidence of working conditions at the plant were gone as a result of the estimated 14 explosions that occurred almost simultaneously and the fires that ensued. Several buildings remained intact, including the magazine in which finished fireworks were stored.

Because the magazine was distanced from the processing units and was further separated from the units by a rise in the land, it did not suffer any damage from the explosions.

I would like to take some time out and show you some slides and give you an idea of what we found at the site, and I will ask Bill White, our area director, to discuss these with you.

Mr. WHITE. This slide depicts graphically the layout of the plant as it looked before the explosion. We had a lot of assistance from the Bureau of Alcohol, Tobacco and Firearms in developing this particular slide. The entry to the worksite was off of a road that—the worksite was located in a hollow.

The entrance to the worksite was in this general area. The initial explosion occurred in this area and was followed by 13 subsequent blasts, to the best of our knowledge, that devastated the entire worksite.

The buildings in this particular location were not destroyed. And, a magazine that was located approximately 300 feet up this road and protected also by a rise in the land was not implicated. It suffered no damage. These essentially are employee vehicles.

Next slide: This is a general slide showing the topography of the land and was taken looking in a northeasterly manner.

Next slide: This slide shows the area near the initial blast. This is the foundation or slab of one of the buildings that was involved in the initial explosion. That is also looking in a northeasterly manner, and again, that building is located in the lower portion of our graphic.

Next slide: That is just another picture of the destruction that occurred at the worksite, which shows you the twisted structural members, and some of the tools and implements that were being used. Just total devastation.

Next slide: This particular slide shows there was a building here. It wasn't until 1 month after the initial explosion when we had the opportunity to interview and take the testimony of the owner of the property that we were aware of the existence of three of the buildings. This depression in the land shows where a building was at one time.

Next slide: This is the office and break room area. The refrigerator, Coke machine were in the area. This is where all the records were retained. There were several fatalities in this area. But this essentially was the company office area, the administrative portion. There was some processing going on in that building.

Next slide: This is the truck that has now become infamous for its involvement in the explosion. It happened at around or near this truck. This truck was being off-loaded by two employees. Neither of those employees survived.

Next slide: This is some of the finished product, the class C fireworks, that the employer manufactured for public consumption.

Next slide: This is the more commercial or class B special fireworks that the employer manufactured. He was somewhat noted in the industry for the quality of his product. But this is the type fireworks that we are seeking to really regulate with our standards for explosives, 29 CFR section 1910.109 special fireworks.

Next slide: This is our last slide, and this shows the magazine still intact that I referred to earlier as being 300 feet up the road at the entry of the workplace. No damage was done to that structure at all.

That is the end of our presentation.

Mr. MILES. You have just seen the devastation at the scene that hampered OSHA's efforts to identify the initial cause of the incident and any factors that might have contributed to its severity. There were few survivors, only those who happened to be outside the buildings and were shielded in some way from the shock waves of the blast.

Following standard agency practice in such cases, OSHA relied on the statements of these eyewitnesses and others who were familiar with the working conditions at the plant. Those interviewed included employees who for one reason or another were absent from work that day. In all, the OSHA team talked with 40 individuals who either were present at the time of the accident, or worked at the facility, or were connected with the employer in some other way. Whenever possible, OSHA checked the accuracy of their testimony with the physical evidence remaining at the scene.

The fact-finding phase of OSHA's investigation concluded on August 5. While the results of this investigation do not allow us to say with absolute certainty what caused the initial explosion at Aerlex, eyewitness reports indicate that just prior to the blast an employee jumped from a pickup truck with a 25 gallon galvanized metal receptacle containing pyrotechnic material in his hands.

Containers of this kind can produce sparks if struck against certain other objects. They also may explode and cause a concussion. Their use in the vicinity of explosives is prohibited by OSHA regulation. As the employee touched the ground, he stumbled forward into the fireworks processing building. An explosion occurred which set off a chain reaction of explosions and fires at the complex.

On September 16, after a careful review of the case file, OSHA issued citations to the manufacturer alleging five willful violations, eight serious violations, and two other-than-serious violations.

Among the standards cited was the standard on storage and handling of explosives, machine guarding, mechanical power transmission, and the standard covering electrical wiring methods, components and equipment. The employer was also cited for violation of OSHA's standard on location of electrical installations such as wiring in hazardous locations.

Now, I would like to tell you something about OSHA's system for targeting inspections. Under OSHA's system for programming safety inspections in the manufacturing sector, visits are scheduled at establishments in manufacturing industries which have lost workday injury rates that are equal to or higher than the national average for all industries as established by the Bureau of Labor Statistics in its most recent published annual survey.

OSHA's experience has shown that targeting inspections on the basis of the injury rates of industrial categories, a system begun in 1979, has generally directed the agency to the workplaces where the most serious hazards are likely to be found. A much lower rate of compliance is found on targeted safety inspections in the manufacturing sector than on OSHA's other inspections.

There are instances, however, in which this target system may not be adequate. In drawing up its high rate inspection lists for the fiscal year just completed, OSHA relied on the results of the BLS survey for 1982. In 1982, the national injury rate for all establishments was 3.4 lost workday injuries per 100 fulltime employees.

The rate for the standard industrial classification which includes most fireworks manufacturers was 3.8. Thus, for the fiscal year just completed, fireworks manufacturers were included on the high rate inspection list which OSHA's national office prepares by State and sends out to its 10 regions.

The names and addresses of actual establishments in these SIC codes are purchased from well-known and long-established private listing services. The Aerlex Corp. did not appear in the list furnished to OSHA by this source, nor was any other record of the plant's existence available to the agency's Oklahoma City area office. Consequently, the company was not on OSHA's list for programmed inspections.

In the 1983 BLS survey, on which our current inspection lists are based, the injury rate for fireworks manufacturers is 3.2, while the average rate for all industries remains at 3.4 lost workday injuries per 100 full-time employees. Therefore, on the basis of national injury rates, fireworks manufacturers would not be included on OSHA's high rate inspection lists for fiscal year 1986.

As far as targeting inspections in fireworks manufacturing establishments is concerned, it was clear that OSHA had to look beyond its system of high rate inspection lists. It also was clear that OSHA's source of establishment names and addresses was inadequate.

Consequently, in April 1985, the agency initiated a Local Emphasis Program for fireworks manufacturers in its Chicago region. Based on the list of fireworks manufacturers and other information obtained from ATF and from local fire marshals and sheriffs, OSHA has conducted 14 inspections under this program to date.

More recently, on August 8, OSHA announced a national Special Emphasis Program for fireworks manufacturers. Under the program, OSHA will inspect every fireworks plant in the United States, subject, of course, to the restriction in OSHA's annual appropriations which prohibits the agency from conducting programmed safety inspections of any employer with 10 or fewer employees in an industry with an injury rate less than the national average.

The appropriations restriction does not, however, prevent OSHA from conducting programmed health inspections in such establishments or for investigating employee complaints, reports of imminent danger, or fatalities and catastrophes. The agency also may employ the full range of its voluntary compliance programs in this sector, including its Consultation Program which is available to employers with less than 10 employees.

When Secretary Brock announced the Emphasis Program, he stated: "We are determined to assure that all fireworks manufacturers know and follow the safety standards that apply to them."

OSHA will make a special effort to coordinate its inspection effort with local units of ATF. When the fireworks manufacturer is scheduled for inspection, the local ATF office will be contacted for any information about the establishment from ATF's records. In particular, OSHA's compliance officers will be attentive to the past violations of ATF storage and their licensing requirements and will notify the local ATF office of possible violations discovered during an OSHA visit. OSHA will also schedule joint inspections with ESA when possible to avoid duplication of Federal enforcement visits.

As part of its Special Emphasis Program, all OSHA area offices will be encouraged to develop outreach programs of assistance to employers, such as consultation and new direction grants, for training and education.

OSHA is also offering a new course on hazards in the fireworks manufacturing industry at its training institute in Des Plaines, IL. Experts from the pyrotechnic industry were consulted by OSHA in preparing for this new training course.

The course will be given on two different occasions, in November 1985, and again after the first of the year, for Federal compliance officers, State inspectors, and State consultants. And, also for the private sector on a space-available basis.

This concludes my presentation. Mr. Chairman, I will be glad to answer any questions you may have.

[Prepared statement of John B. Miles, Jr. follows:]

PREPARED STATEMENT OF JOHN B. MILES, JR., DIRECTOR OF FIELD OPERATIONS, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to describe the investigation by the Occupational Safety and Health Administration (OSHA) of the explosion and fire at the Aerlex Corporation in Hallett, Oklahoma, on June 25, 1985, and to discuss with you OSHA's efforts to ensure safe and healthful working conditions in plants that manufacture fireworks.

Before I begin, I would like to discuss OSHA's authority to inspect safety and health conditions at fireworks plants. As the Subcommittee is aware, section 4(b)(1) of the Occupational Safety and Health Act of 1970 (OSH Act) precludes the agency's enforcement of standards for working conditions for which other federal agencies exercise statutory authority. The purpose of this provision is to prevent OSHA and other federal agencies from duplicating regulation of the same hazards.

In the case of explosives facilities, the Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) exercises statutory authority for the licensing of manufacturers of explosives and has issued regulations for the storage of explosives, including fireworks. Under the provisions of section 4(b)(1), OSHA must confine its enforcement efforts to working conditions not addressed by ATF regulations. In practice, this means that OSHA's enforcement of standards at fireworks plants is limited to working conditions associated with the manufacture and assembly of fireworks and any temporary storage associated with the production process.

OSHA's long-standing jurisdictional arrangement with ATF was first expressed formally in an exchange of letters between the two agencies in March and July

1974. These letters of agreement continue to form the basis of the two agencies' shared authority for occupational safety and health for employees at fireworks plants.

OSHA'S INVESTIGATION AT AERLEX

On the morning of June 25 an explosion and fire at the Aerlex Corporation razed most of the structures on the rural, 40-acre site. Twenty-one people were killed, and five others were injured. Within four hours of the initial blast, an OSHA team consisting of the Area Director of the agency's Oklahoma City Area Office and three compliance officers arrived at the site to begin an inspection. Two compliance officers from Chicago later joined the team. One of the compliance officers was an expert in the field of ordnance; all members of the team had considerable experience in conducting inspections at fireworks plants.

Much of the physical evidence of working conditions at the plant was gone as a result of the estimated fourteen explosions that occurred almost simultaneously and the fires that ensued. Several buildings remained intact, including the magazine in which finished fireworks were stored. Because the magazine was distanced from the processing units and was further separated from the units by a rise in the land, it did not suffer any damage from the explosions.

The devastation at the scene hampered OSHA's efforts to identify the initial cause of the incident and any factors that might have contributed to its severity. There were few survivors—only those who happened to be outside the buildings and were shielded in some way from the shock waves of the blast. Following standard agency practice in such cases, OSHA relied on the statements of these eye witnesses and others who were familiar with the working conditions at the plant. Those interviewed included employees who for one reason or another were absent from work that day. In all, the OSHA team talked with forty individuals who either were present at the time of the accident, or worked at the facility, or were connected with the employer in some other way. Whenever possible, OSHA checked the accuracy of their testimony with the physical evidence remaining at the scene.

The agency coordinated its inspection efforts with other federal officials and local laws enforcement personnel who were present at the site on the day or days immediately following the explosions. OSHA compliance officers consulted with ATF officials on technical matters, particularly on the proper storage of explosives. OSHA also worked side-by-side with officials of the Department of Labor's Employment Standards Administration (ESA), who were trying to recover employment records in the debris of the remains of the administrative building.

The fact-finding phase of OSHA's investigation concluded on August 5. While the results of this investigation do not allow us to say with absolute certainty what caused the initial explosion at Aerlex, eyewitness reports indicate that just prior to the blast an employee jumped from a pickup truck with a twenty-gallon galvanized metal receptacle containing pyrotechnic material in his hands. Containers of this kind can produce sparks if struck against certain other objects; their use in the vicinity of explosives is prohibited by OSHA regulations. As the employee touched the ground, his knees buckled and he stumbled forward into a fireworks processing building. An explosion occurred immediately. This initial explosion set off a chain reaction of explosions and fires at the complex.

On September 16, after a careful review of the case file by OSHA's National Office, OSHA issued citations to the manufacturer alleging five willful violations, eight serious violations, and two other-than-serious violations of the OSH Act. A willful violation of the Act is defined as one which the evidence shows was committed with intentional or voluntary disregard of the requirements of the Act or with plain indifference to employee safety. Thus, OSHA would consider a violation to be willful if the employer were aware that a hazardous condition existed but did not eliminate it. A serious violation is one in which the employer knew of or could have known of a violative condition in which there is a substantial probability of death or serious physical harm to employees.

Penalties of $10,000 were proposed for each of the willful violations, and penalties of $1,000 were proposed for each serious violation—the maximum permitted under the OSH Act for these kinds of violations. A total of $58,000 in penalties was proposed. Among the standards cited were OSHA's standard on storage and handling of explosives (29 CFR 1910.109), machine guarding (1910.212), mechanical power-transmission apparatus (1910.219), and the standard covering electrical wiring methods, components, and equipment (1910.305). The employer was also cited for violation of OSHA's standard on location of electrical installations such as wiring in hazardous locations (1910.307).

OSHA INSPECTIONS OF FIREWORKS MANUFACTURERS

The goal of OSHA's inspection system is to direct agency resources to the workplaces where the most serious safety and health hazards are likely to exist. The agency uses two approaches in sending compliance officers to conduct inspections. The first is an unprogrammed approach in which OSHA responds to reports of alleged hazards and investigates complaints, referrals by other agencies, fatalities, catastrophes, and reports of imminent danger. The second is a programmed approach, in which OSHA determines from available data the industries and activities in which it is most probable that hazards may exist. Programmed inspections now make up approximately 80 percent of all OSHA inspections. Since 1980, there has been a 68 percent increase in OSHA's programmed inspection activity.

Under the agency's system for programming safety inspections in the manufacturing sector, visits are scheduled at establishments in manufacturing industries (Standard Industrial Classifications 2000 - 3999) which have lost workday injury (LWDI) rates (calculated nationally, and at the state level, for each industry) which are equal to or higher than the national average for all industries as estimated by the Bureau of Labor Statistics (BLS) in its most recent published Annual Survey.

OSHA's experience has shown that targeting inspections on the basis of the LWDI rates of industrial categories—a system begun in 1979—has generally directed the agency to the workplaces where the most serious hazards are likely to be found. A much lower rate of compliance is found on targeted safety inspections (in the manufacturing sector) than on OSHA's other inspections.

There are instances, however, in which this targeting system may not be adequate. SIC code 2899, for example, is a general classification for manufacturers of "Chemicals and Chemical Preparations." This category includes more than 100 types of chemical manufacturers, and the lost workday injury rate for the grouping may not accurately reflect the potential dangers of workplaces where fireworks are manufactured.

In drawing up its High Rate Inspection Lists for the fiscal year just completed, OSHA relied on the results of the BLS Survey for 1982. In 1982, the national LWDI rate for all establishments was 3.4 lost workday injuries per 100 fulltime employees, while the rate for the Standard Industrial Classification (SIC) that includes most fireworks manufacturers (SIC 2899) was 3.8. Thus, for the fiscal year just completed, fireworks manufacturers were included on the High Rate Inspection Lists which OSHA's national office prepares, by state, and sends out to its ten Regions.

The names and addresses of actual establishments in these SIC codes are purchased from a well-known and long-established private listing service. The Aerlex Corporation did not appear in the list furnished to OSHA by this source, nor was any other record of the plant's existence available to the agency's Oklahoma City Area Office. Consequently, the company was not on OSHA's list for programmed inspections.

In the 1983 BLS Survey on which our current inspection lists are based, the LWDI rate (calculated nationally) for SIC 2899 is 3.2, while the average rate (calculated nationally) for all industries remains at 3.4 lost workday injuries per 100 fulltime employees. Therefore, on the basis of national injury rates, establishments in SIC 2899 (including fireworks manufacturers) would not be included on OSHA's High Rate Inspection Lists for FY 1986.

OSHA, however, uses BLS estimates of injury rates calculated by state to refine its targeting lists when the national LWDI rate for a particular industrial category is less than the national average for all industries. When that happens, OSHA checks the state LWDI rates—which normally vary somewhat from the national average—and includes in the High Rate Inspection Lists (which as already noted are organized by state) those SICs with state LWDI rates which exceed the national average. In the case of SIC 2899, the 1983 LWDI rate, calculated by state, exceeds the national average in eleven states. Consequently, fireworks manufacturing establishments have been included in OSHA's FY 1986 High Rate Inspection Lists for those eleven states. (Oklahoma is not among them.)

SPECIAL EMPHASIS PROGRAMS FOR FIREWORKS MANUFACTURERS

As far as the targeting of inspections in fireworks manufacturing establishments was concerned, it was clear that OSHA had to look beyond its system of High Rate Inspection Lists. Otherwise, in 39 states, fireworks manufacturers would not be targeted for OSHA inspections in FY 1986. It also was clear, since many of these operations are seasonal, with peak activity occurring in the months prior to July Fourth, that OSHA's usual source of establishment names and addresses was inadequate.

Consequently, in April 1985 the agency initiated a local emphasis program for fireworks manufacturers in its Chicago region. Using lists of fireworks manufacturers and other information obtained from ATF and from local fire marshals and sheriffs, OSHA has conducted fourteen inspections under this program to date.

More recently, on August 8, OSHA announced a national Special Emphasis Program for fireworks manufacturers. Under the program, OSHA will inspect every fireworks plant in the United States, subject of course to the restriction in OSHA's annual appropriations which prohibits the agency from conducting programmed safety inspections of any employer with ten or fewer employees in an industry with an LWDI rate less than the national average. The appropriations restriction does not, however, prevent OSHA from conducting programmed health inspections in such establishments or from investigating employee complaints, reports of imminent danger, or fatalities and catastrophes. The agency may also employ the full range of its voluntary compliance programs in this sector, and OSHA is making extensive efforts to reach the smaller employer through programs I will describe shortly. The agency has requested the 21 states and two jurisdictions that operate their own federally approved, private-sector OSHA programs to develop similar emphasis programs.

When Secretary of Labor Brock announced the emphasis program, he stated, "We are determined to assure that all fireworks manufacturers know and follow the safety standards that apply to them." To carry out this goal, OSHA has prepared an inspection list which includes all establishments licensed by ATF as manufacturers of "low" explosives, including fireworks. The list has been sent to the agency's ten Regions for distribution to OSHA Area Offices, which have been directed to schedule a comprehensive inspection of every fireworks manufacturing establishment with more than ten employees. The Area Offices have been instructed to keep in mind the seasonal nature of fireworks production in scheduling these inspections.

OSHA will make a special effort to coordinate its inspection effort with local units of ATF. When a fireworks manufacturer is scheduled for inspection, the local ATF office will be contacted for any information about the establishment from ATF's records. In particular, OSHA compliance officers will be attentive to past violations of ATF storage and licensing requirements and will notify the local ATF office of possible violations discovered during an OSHA visit. OSHA will also schedule joint inspections with ESA when possible to avoid duplication of federal enforcement visits. If OSHA compliance officers spot possible violations of ESA child-labor or wage-hour rules, the local ESA office will be notified.

OTHER PROGRAMS TO ASSIST EMPLOYERS

As part of its special emphasis program, all OSHA Area offices will be encouraged to develop outreach programs of assistance to employers. OSHA is planning to send letters to all fireworks manufacturers explaining the hazards involved in their operations and the requirements of various OSHA standards. The agency is also considering issuing and distributing reports of fatal accidents which OSHA has investigated in fireworks manufacturing plants. Recently, several staff members of the Training Institute and I attended the annual convention of the American Pyrotechnics Association to exchange information with experts in that industry.

Another source of assistance is OSHA's on-site consultation program, which is available free of charge to small-business employers in virtually every state. (Only Louisiana has chosen not to participate.) At the employer's request, a consultant, employed by the state, will provide advice on workplace hazards or training in safety and health either at the workplace or away from the worksite.

To complement the special emphasis enforcement effort, OSHA is encouraging fireworks manufacturers to request on-site or off-site consultation. All fireworks manufacturers who are licensed or have applied to ATF for a license, including manufacturers with ten or fewer employees, are eligible to receive these services. The consultant will point out any violations of the OSH Act and will suggest methods to abate hazards. If the need exists, training can also be provided by the consultant. As part of the consultation visit, employers will be informed of ESA requirements regarding employment of minors.

OSHA is also offering a new course on hazards in fireworks manufacturing at its Training Institute in Des Plaines, Illinois. Experts from the pyrotechnics industry were consulted by OSHA in preparing this new training effort. The course will be given on two different occasions in November 1985 for federal compliance officers, state inspectors and state consultants.

That concludes my prepared remarks. I will be happy to answer any questions you may have.

Mr. GAYDOS. Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman. Let me start off with something simple. I want to get into a lot of specifics. Do we have an admission here since we didn't get one out of ATF that you all screwed up?

Mr. MILES. I won't say we screwed up. I think we used our system for targeting, we used our method to put them on the list. It is unfortunate that we did not have this company on the list.

Mr. SYNAR. In other words, we are not going to get an admission out of you?

Mr. MILES. I can only say we——

Mr. SYNAR. If we are not going to do that, then we have to go into specifics, and regrettably, Mr. Chairman, we have to explain to all these people who are here, many of the families affected, how—can you hear me?

[Recess.]

Mr. SYNAR. Let me start, if I can. I am sorry, ladies and gentlemen, but we are under some time limits because of Mr. Tauke.

Mr. Miles, should class B fireworks manufacturers be required to register with both OSHA and ATF? Wouldn't that requirement end the hide-and-seek game that seems to occur between manufacturers and regulators?

Mr. MILES. Well, if we had a registry, we would obviously know where they were. If they were registered with ATF and we had that list, we would know where they are also.

Mr. SYNAR. But, shouldn't—just answer the question. Should the class B manufacturers be registered both with OSHA and ATF?

Mr. MILES. I think that would be double reporting. We have the last ATF——

Mr. SYNAR. You didn't have the list from ATF with respect to Aerlex, did you, and that list existed?

Mr. MILES. No, we did not have that.

Mr. SYNAR. In fact, in this case the only list that you all accumulated on fireworks manufacturers was either from Dun & Bradstreet or a State agency; correct?

Mr. MILES. What we used for Oklahoma was Dun & Bradstreet, the Oklahoma Manufacturing Guide, or any local knowledge that we had from either the fire marshal or from our compliance officers passing by the site yes, sir.

Mr. SYNAR. Isn't it shocking that that list did exist at ATF and you didn't take the time to go over there and look?

Mr. MILES. We did look at one. We looked in Chicago at that list where we had an emphasis program going in Chicago. We had not put it into a nationwide list yet.

Mr. SYNAR. Why does OSHA obtain its list and names and addresses of manufacturers in specific industries from a private company?

Mr. MILES. Over the years, that has been our best source of information. We tried initially at OSHA to use the States' employment files; but certain States have legislation against that. I believe Oklahoma is one that has that kind of legislation.

We could not get that information. We went to the best list we had available. Dun & Bradstreet was the best commercial available list.

Mr. SYNAR. Why don't you accumulate your own list?

Mr. MILES. We do try to do that. We do try to do that very thing.

We buy manufacturing guides in the state. We use our local compliance officers. We get telephone books to try to supplement our list locally.

But there is a problem with all that in that the turnover rate in the United States, with the 5 million establishments is so high. About 10 percent of businesses go out of business every——

Mr. SYNAR. What if I told you that a number of former employees at Aerlex had notified OSHA here in Oklahoma not only of the existence of the plant, but of problems? Do you have any record of that?

Mr. MILES. No, I don't. But I think Mr. Bill White——

Mr. SYNAR. Mr. White, do you have any record of that?

Mr. WHITE. The Oklahoma City area office has no record of any complaint or referral from the private sector or public sector.

Mr. SYNAR. You know, this wasn't a small plant. I mean, you wouldn't have to go far outside of Oklahoma or other areas in this country to probably find one of the products made by Aerlex.

Are you telling me that you all did not know this plant even existed?

Mr. WHITE. We were not aware of the existence of that plant.

Mr. SYNAR. You were aware of the 1979 explosion?

Mr. MILES. There was an explosion in 1979, yes. We were aware of that. However, we had an office which was out of Tulsa that was responsible for that jurisdiction back in 1979——

Mr. SYNAR. Who is in charge of it? Who was in charge of it when the second explosion occurred?

Mr. WHITE. When the explosion in 1979——

Mr. SYNAR. No, no, no. This one.

Mr. WHITE. In this explosion, I was responsible for it.

Mr. SYNAR. You are telling me that because there was an explosion in 1979, that wouldn't have given you as a common sense, thinking person, some type of maybe inclination that that plant might still exist?

Mr. WHITE. What happened was, we took responsibility for that portion of the State in 1982. The only thing that was transferred, of course, were those working documents and those working files.

Mr. SYNAR. So you did have working files that said in 1979 there was a plant there, because there was an explosion, correct?

Mr. WHITE. We had no working file, because in 1979, the fire consumed the workplace. There were no employees injured or hospitalized, no fatalities.

Mr. SYNAR. There was no record of the 1979 explosion——

Mr. WHITE. There was no record of the 1979 explosion. We assumed that after 1979, the worksite went out of business. That would be my——

Mr. SYNAR. You assumed that?

Mr. WHITE. That would be my assumption. I was not the area director——

Mr. SYNAR. How many fireworks sites are there in Oklahoma, Mr. White?

Mr. WHITE. There are approximately 27 that are licensed.

Mr. SYNAR. Twenty-seven that are licensed. How many unlicensed ones are there?

Mr. WHITE. I have no idea.

Mr. SYNAR. Are you trying to tell me that if an explosion occurred in 1979 at a plant on this exact site, that when you took the records in 1982, that wouldn't cause you to think that maybe there might still be a plant there?

Mr. WHITE. No, there were no records that indicated there was a plant there in anything that we received.

Mr. TAUKE. Would the gentleman yield?

Mr. SYNAR. Yes.

Mr. TAUKE. When you say 27 licenses, licensed by whom?

Mr. WHITE. ATF.

Mr. TAUKE. So did you know that there were 27 licensed a year ago or did you just find that out?

Mr. WHITE. We just found that out.

Mr. SYNAR. So you didn't—oh, that is interesting.

The way you found out, after the incident, that there were 27 sites throughout Oklahoma that you were in charge of inspecting is that you went to the ATF file, but you didn't go there previously?

Mr. WHITE. No, we have not conducted any inspections except one in the State of Oklahoma during the existence of the Oklahoma City area office.

Mr. MILES. Let me clarify one thing. Of the 27 of those that are licensed, most are not primarily fireworks manufacturers. Those were some——

Mr. SYNAR. No. The point is, Mr. Miles, is that you found out how many there are that you are going to look at through ATF. This was in ATF's records. So it was available if you had taken the time to look at ATF files to find this, is that not correct?

Mr. MILES. Yes.

Mr. SYNAR. You didn't screw up?

Mr. TAUKE. Would the gentleman yield?

How many of the 27 do you have jurisdiction over now?

Mr. WHITE. We have jurisdiction over most places of employment under our enabling legislation. However none of those 27 establishments will receive an inspection under the new special emphasis program that we have. There are either fewer than 10 employees at some and others that actually do not manufacture fireworks. They are not in the 2899 SIC code. Our special emphasis program specifies that it has to be a manufacturer of fireworks. Most of those establishments have licenses because they assemble or store or package.

Mr. TAUKE. So isn't there only a couple manufacturers of fireworks in Oklahoma?

Mr. WHITE. To the best of my knowledge, there are no remaining manufacturers at this point in time now.

Mr. TAUKE. So there was only one that which in the course of the slide presentation was well known for a certain kind of fireworks, and nobody knew about it at OSHA.

Mr. MILES. That is right. Our list——

Mr. SYNAR. Where do you think they get these fireworks from in Oklahoma?

Mr. MILES. Ship them in from other States.

Mr. SYNAR. And you think for all of those that that was the case?

Mr. MILES. No, they are not all of them. But our list that——

Mr. SYNAR. Do you all ever inspect these fireworks to see where they are manufactured?

Mr. MILES. No, we have not done—I have not.

Mr. SYNAR. Let me go on.

Will the new special emphasis inspection program include those manufacturing plants with 10 or fewer employees?

Mr. MILES. No, it will not because of an appropriations restriction that says we cannot inspect employers in low-hazard industrial categories who have 10 or fewer employees.

Mr. SYNAR. All right.

Should Congress remove that exemption of factories with 10 or fewer employees so that they can be inspected by OSHA in your opinion? Because some of these plants are, as you know, the most hazardous, are they not?

Mr. MILES. I think so. And I think in some cases, I think that appropriations rider should be removed because some small industries need to be inspected.

Mr. SYNAR. All right.

Let's say even if OSHA had known about Aerlex. Would they have been able to inspect it if it had 10 or fewer?

Mr. MILES. No, we would not be able to inspect it in fiscal year 1986 on a scheduled safety visit if it had 10 or fewer employees, of course. We would have been able to inspect it in fiscal year 1985, however.

Mr. SYNAR. What has OSHA done to ensure that these plants will not be missed in the special emphasis program—ones such as Aerlex?

Mr. MILES. As I said, under our emphasis program, we have a list from the Bureau of Alcohol, Tobacco, and Firearms. We are going to go with that and try to determine every manufacturer. We plan to inspect every fireworks manufacturing facility in the United States which has over 10 employees.

The way it works now, we will go out there and see if they had at any time during the year over 10 employees. So, if for the Fourth of July, they hire more people to put on displays and things, they may not be covered under that appropriations restriction.

Mr. SYNAR. Can you tell me the percentage of 10 or fewer employee type operations versus 10 and over?

Mr. MILES. No, I don't know that right now. It is a guess.

There are a large number with 10 and under. But there are only about 100 plants in the country.

Mr. SYNAR. One hundred plants of 10 or over or 10 or under?

Mr. MILES. Of all plants. I don't know the size.

What we do is we go to the plantsite and then check the records to see how many employees they have or have had during the year.

Mr. SYNAR. Will the inspections in this special emphasis program be by surprise or will they be like ATF's, notified?

Mr. MILES. All our inspections are by surprise except in some special instance. But in these fireworks inspections, they will all be surprise. All our inspections are by surprise.

Mr. SYNAR. Let me go back to why you didn't know Aerlex existed.

Class B explosives can only be used in public displays which are conduted by professionals; is that correct?

Mr. MILES. I think so. But you are in an area that I am not quite that familiar with.

Mr. SYNAR. Are those professionals licensed by anyone?

Mr. MILES. The class B are licensed by ATF whether they are people who put on displays or not. I am not sure of that.

Mr. SYNAR. Have you ever tried to find out from these professionals where they obtained those fireworks for those public displays?

Mr. MILES. No, I have not.

Mr. SYNAR. Do you think that might be a good area to look into?

Mr. MILES. I think so.

Mr. SYNAR. Take your own notes, OK?

Mr. MILES. I have met with the Pyrotechnic Association in Denver a couple weeks ago and talked to these people about that.

Mr. SYNAR. If you are compiling a list, it would seem just logical to me to start backward, you know, find where they are, where they got them, and go backward, OK?

Mr. MILES. We will try our best to get a list as comprehensive as possible of everybody engaged in the manufacturing of fireworks in the United States.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. GAYDOS. Mr. Tauke.

Mr. TAUKE. Gentlemen, I anticipate that by now you have figured out that we aren't too impressed with the way in which you determined which places were manufacturing fireworks. And I assume that you have probably had some second thoughts about that, too.

So I am not going to dwell on that issue, except to hope that you will work with us to figure out what changes need to be made now in the statute.

It is pretty appalling, frankly, that there is one manufacturer in the State who was making a well-known product and nobody knew about it.

Let's talk for a minute about this working relationship that you now have with the Bureau of Alcohol, Tobacco and Firearms in looking at these facilities.

First, do I understand that if they become aware of a facility, you will be aware of that facility; is that correct?

Mr. MILES. Yes. They have given us a list of fireworks manufacturers and they are updating the list even more and planning to give us that in the next couple of weeks.

Mr. TAUKE. Will you be sharing information that your various inspectors will acquire as they inspect facilities? In other words, if an OSHA inspector inspects a facility and sees some potential problems in the storage area, will BATF be notified, or will ATF notify you if you have potential reasons to be concerned?

Mr. MILES. Yes. In our emphasis program, we plan to on a regional level, notify BATF if we find violations or things that we think are violations of their standards.

Mr. TAUKE. OK.

Do you have any kind of training mechanism for inspectors of these facilities?

Mr. **Miles**. Yes, we do have training. We started some taining in our Chicago region about a year ago where we put on training.

Now we are coming in with a nationwide training program at our Institute in Chicago where we are using experts from the industry. And BATF is putting it together for our compliance officers.

Mr. **Tauke**. Do you have any idea how many facilities will be within the jurisdiction of OSHA for fireworks manufacturers or would be within the justification of OSHA for inspection purposes?

Mr. **Miles**. I think—the number we get is between 100, I think, and 120 fireworks manufacturers in the United States. How many of those are under 10, I don't know. We will go to those sites and they will have to prove to us how many employees they have had through the year.

Mr. **Tauke**. So, how long will it be before we might have a definitive list of fireworks manufacturers under the jurisdiction of OSHA?

Mr. **Miles**. Well, it will be after we go to all the people on the BATF list. The inspections will start in January and go through June, which is the primary production time for these operations.

Mr. **Tauke**. So, by June of next year, you will have visited all of the sites that are on the BATF list?

Mr. **Miles**. I would hope to, yes.

Mr. **Tauke**. OK.

Let me talk about the 10-employee limit. You walk into a facility and you say, we are from OSHA. And, the manufacturer says, I only have eight employees. What happens.

Mr. **Miles**. We ask him to show us his records, the records for that year, to see how many employees he did have.

Mr. **Tauke**. For that year beginning when?

Mr. **Miles**. Previous calendar year.

Mr. **Tauke**. If you are doing it—let's see, this is August. Let's say you are doing it next May. You are doing it next May. What months does he have to show you?

Mr. **Miles**. He shows his records for the calendar year 1985.

Mr. **Tauke**. Calendar year 1985. So, if at any time during 1985 the employer had 10 or 11 employees, that employer would be subject to OSHA inspection?

Mr. **Miles**. Yes, he would, if he had 11 employees.

Mr. **Tauke**. If that employer had no more than nine employees any time during 1985, then what happens?

Mr. **Miles**. He would not be subject to a scheduled inspection. He would be subject to an inspection by an employee complaint, by a fatality, or by a health inspection, which would be on health problems as contrasted with safety problems, which are the primary concern here.

Mr. **Tauke**. Do you have any educated speculation as to what percentage of the manufacturers on the Alcohol, Tobacco and Firearms list would be subject to OSHA inspection?

Mr. **Miles**. I don't have any idea. I would assume that probably those over 10 are probably less than 50 percent of the list. But, that is just a guess. It is a small industry with a lot of small plants around the country.

Mr. TAUKE. Given these circumstances, do you think it would be wise for us to change some of the laws relating to fireworks inspections?

Mr. MILES. I see there is an overlap between us and BATF. And, I think, Congress in looking at it, you need to consider that. Right now, we have the coverage of manufacturing, and we are out there, so we can do that job. But, there is an interface with BATF.

Mr. TAUKE. As a professional, does it make any sense to you for us to have this division between you and ATF?

Mr. MILES. I think it would be much cleaner if you had just one agency going out there.

Mr. TAUKE. So, you don't know of any good reason to have two—

Mr. MILES. No, I think the way the law is written——

Mr. TAUKE. I understand that. Now, would it make more sense to have one?

Mr. MILES. I think it would have more sense to have one. I think one agency going out there to do the job would be the best way to do it.

Mr. SYNAR. Is overlap the right word or is gap a better word? If there was overlap, you would have been out there looking at this place. But, there is a gap—twice.

Mr. MILES. I am talking about the standards that apply. But, it is—I guess you are making reference to the fact that we had a list and they had a list and there was a gap.

Mr. SYNAR. The reason you are having these meetings now in Washington is not because of overlap, but because of gaps, is it not?

Mr. MILES. It could be that since we wound up with a plant that we didn't have on our list, you are right.

Mr. TAUKE. Assuming we don't massively change the law, which is tough to do sometimes in Congress, in order to really deal with the problem, then, assume we are working under the same general circumstances or statutes that we are working under now. Is it your opinion that section 4(b)1 is too restrictive for OSHA in the sense that if ATF comes in as they do now and say we are going to, beginning September 12, look at storage on the site, that would apparently mean that OSHA cannot inspect storage facilities on the site and have regulations relating to the amount of product that would be stored in the manufacturing site? At least, that is the way I understand it. A, am I understanding it correctly, and B, is it too restrictive for you?

Mr. MILES. As far as question "A" is concerned, it does apply the way you say it. They have storage, we have the manufacturing part of the particular operation. That is the way we separate them.

Mr. TAUKE. Let me just clarify. Now that they have set standards for storage in the manufacturing site, you cannot have any standards relating to how much black powder, for example, can be at the workplace, work station?

Mr. MILES. That is right. In the manufacturing area, what is stored in there would be under their jurisdiction, that is right.

Mr. TAUKE. OK. Now, do you find that too restrictive for your inspectors?

Mr. **Miles**. Well, I think what we usually wind up doing—maybe not in the case of ATF but in other cases where we are running overlaps like that—we find out what is wrong and sit down and tell the other agency and work it out. It is restrictive to an extent.

Mr. **Tauke**. We have spent a lot of time talking about what is wrong with ATF and OSHA. I am a little curious about the employer in this case. First of all, would you classify this employer as an illegal manufacturer of fireworks?

Mr. **Miles**. No, I think he was licensed. I really can not comment about the employer since we are in the court on this particular case. But, I would like to say one thing about the people—talking about ATF and OSHA: The responsibility for safety and health of employees is the employer's responsibility. It is not a government responsibility. Under the Occupational Safety and Health Act the employer is resonsible for the safety and health in the workplace for his employees. And, OSHA can never be the total ensurer of safety and health of the workers—

Mr. **Tauke**. Well, that is why I wanted to raise that point. I guess that beyond that, the employer has fundamental responsibility to notify the agencies, correct?

Mr. **Miles**. Yes, he has responsibility. He has even more fundamental responsibility than that under the Occupational Safety Act. He has to provide a safe and healthful workplace for his people.

Mr. **Tauke**. Right. And also has responsibility to notify you—we have jumped all over you for not knowing about it, which I continue to do. But, at the same time, the employer was supposed to notify you of its existence; is that correct?

Mr. **Miles**. No, he was not supposed to notify us. He had to be licensed—he didn't have to notify us.

Mr. **Tauke**. Oh, he didn't? That is curious. Should we require that employers who fall within the scope of the law notify you of their existence?

Mr. **Miles**. Well, I think it would make our job easier than where we stated—we buy a list from Dun & Bradstreet, we try to get unemployment files, we buy manufacturers' guides, and then we still miss some people that are doing manufacturing. So, as far as covering everybody, if they reported to us, yes, it would.

Mr. **Tauke**. What is this law that you talked about—State law that prevents you from doing something with less—

Mr. **Miles**. OK. Since we began to target our inspections at the late 1970's, we have used State Workman's Unemployment Insurance files in the State which show the manufacturers in the State but in eight States where there is Federal OSHA enforcement we could not get that information because of State laws that prohibit us from getting that information.

So, this was one source we had. Again, it had some problems. Even those files were not accurate because the number of businesses going out of business in the United States are such that those lists never can be too accurate.

Mr. **Tauke**. I thank the gentleman for your testimony.

Mr. **Gaydos**. Mr. Synar.

Mr. **Synar**. Mr. White, when you were showing us the slides, you pointed out that one shell, and, you said this manufacturer was known for its quality. How did you know it was known for its quality? You didn't even know it was there.

Mr. MILES. Our investigation after the explosion was——

Mr. SYNAR. What was——

Mr. MILES [continuing]. After the fact we learned that within the industry the manufacturer is known as an outstanding manufacturer of products.

Mr. SYNAR. Mr. Miles, would you say that nationwide, State-by-State, that there are some gaps of licensing and inspection on a State-to-State basis? In other words, not all States are doing an effective job in supervising and inspecting those, are they?

Mr. MILES. Well, I don't know what you really mean.

Mr. SYNAR. In other words, not all states are doing a good job in inspection and licensing these operations, are they?

Mr. MILES. I think they could be tightened up.

Mr. SYNAR. So, there are problems there, are there not?

Mr. MILES. Yes, I believe so.

Mr. SYNAR. Would I be logical or would I be using common sense if I said that in most local areas where these operations exist, that if it is a major industry like it was in Hallett, that probably the local fire marshal or the local authorities would turn their head to what violations there would be?

Mr. MILES. I don't know that. I would not comment on that. It could——

Mr. SYNAR. It could happen, could it not? Given that, that we know there are gaps in the State, there are gaps on the localities, wouldn't a logical—you have admitted that. Wouldn't it be logical to think that you ought to check with ATF to see if they had something listed?

Mr. MILES. Oh, I agree. I think we should know what the ATF list is.

Mr. SYNAR. So, why didn't you do it before now?

Mr. MILES. Because we have about 5 million workplaces to inspect. We are responsible for these workplaces, but we don't inspect all of them. We develop what we think is the best list. We did not have the ATF list. We didn't have that list.

Mr. SYNAR. Why?

Mr. MILES. We didn't——

Mr. SYNAR. I mean, when a class B manufacturer wants to sell to a city, the way that city is going to purchase his fireworks is to go and make sure that they are ATF licensed; is that not correct?

Mr. MILES. I don't know.

Mr. SYNAR. Doesn't that guarantee that that manufacturer is going to get products bought by cities?

Mr. MILES. I would assume so, yes.

Mr. SYNAR. Well, why then wouldn't it be logical to think that you ought to go to the ATF list and find out where these class B guys are?

Mr. MILES. We did in some places. We——

Mr. SYNAR. But, you didn't do it here.

Mr. MILES. We did not do it in Oklahoma, no. We did not.

Mr. SYNAR. Isn't it logical?

Mr. MILES. It is logical to do that, yes. That is why we are doing it now.

Mr. SYNAR. I am like Joe. We are not here to bang on you, but, boy, I mean——

Mr. MILES. I told you they weren't on the list——

Mr. SYNAR. Tell these people sitting out here——

Mr. MILES. They weren't on the list. We wish we had gone to the Aerlex plant. It is unfortunate the tragedy occurred. We wished we had gone to the ATF and had the list. We didn't have that list at that time. We had what we thought was the best list available at the time. We had Dun & Bradstreet, we had the Oklahoma Manufacturers Guide, we had these things——

Mr. SYNAR. But, you just admitted to me that you knew there were gaps in the State, gaps in the private, gaps in the local——

Mr. MILES. I said that I know that now. I am not sure I knew it then, prior to the explosion.

Mr. SYNAR. Let me ask you one final question.

Have you increased the number of OSHA inspectors in this area, or have you diverted inspectors from other programs, from other industries?

Mr. MILES. What we have is a fixed number of compliance officers. We usually use them for manufacturing inspections, and we will use these compliance officers to do these inspections.

Mr. SYNAR. And you diverted them from other industries into fireworks, or are you asking for——

Mr. MILES. Well, yes. We will take the ones that are going to do fireworks inspections from other inspections we are doing——

Mr. SYNAR. So now, other industries better be—I mean, they are on notice now that there are less inspectors to cover their areas; right?

Mr. MILES. Well, it is—like I say, we do so many manufacturing inspections. We increased our emphasis in certain areas. These are only 120 inspections. They don't take that long.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. GAYDOS. Thanks, Mike.

Mr. Miles, I have one question for you. Do you have a course of action you are going to take, as far as the illegal fireworks operations are concerned? Do you think it is important enough to address your attention to throughout the country?

Mr. MILES. I think it is very difficult to find those people. BATF, I am sure, has trouble finding those people. And their trained investigators will find those type of people that are criminal elements in those illegal operations. We don't have the necessary people to do that. If we can find in our inspections that we come across—if our compliance officers traveling the State hears of an illegal operation—we will try to inspect those.

At the same time, we will refer them to BATF because the illegal manufacturing of fireworks is a criminal violation and BATF has much stronger sanctions than ours under the Occupational Safety and Health Act. But we will try our best. Again, I say it will be a very difficult job.

Mr. GAYDOS. What will you do if you come across an illegal operation? Are you going to presume that the Bureau will shut it down and that you are not going to be called upon to inspect?

Mr. MILES. Well, I think we would try to inspect it. But, at the same time, we would get hold of the bureau and try to get them to inspect. As I said, they do have their criminal sanctions for that. We probably wouldn't know they are unlicensed until we got there and found out about them.

Mr. GAYDOS. What about the injury rate that we keep nationally—if it doesn't indicate or warrant more inspections, then even the legitimately registered companies would not be inspected under your progressive program—do you think you should take a new approach there?

Mr. MILES. Well, this year one of the objectives of the Agency is to look at our prioritization system. We target on health, and are looking at ways that we may change that around a little bit to ensure that we are getting to the places we ought to be. We are going to take a look this year. We have several studies underway to look at our enforcement and how we ought to do it.

Mr. GAYDOS. Speaking about the legitimate factories, would you explain to the committee why the injury rate is so low, particularly since you have a pretty dangerous activity? And I am comparing this with a lot of other dangerous activities that have a much higher injury rate, like mining in certain areas. Why is it that working with a dangerous substance the injury rate seems to be very low, which would not even require a inspection from you in most instances?

Mr. MILES. I don't think that the injury and illness rates are a function of the explosions. When you have an explosion, you have fatalities. You don't necessarily have injuries. I think that is why they don't have a lot of——

Mr. GAYDOS. It is either everything or nothing?

Mr. MILES. I think it is typical in an industry like that.

Mr. GAYDOS. Do you have any more questions?

Mr. SYNAR. No. But I want to say something to you—there are a number of people out here from the Hallett area, and they are going to come up to you afterward and they are going to tell you, Mr. White, they informed somebody at OSHA here in Oklahoma that this plant existed prior to this happening, and there were violations going on.

I hope you just don't take it as people who are very upset. I think you ought to get to the bottom of it. I think you ought, within your own agency, find out how those calls didn't get answered or at least those appeals, because, you know, I am from Oklahoma. I represent this area. I mean, I just got this in 1980. But I knew back when I was growing up, that this place existed.

Mr. WHITE. Let me answer. I am concerned at your comments, that they complained to us and we have—from your information an indication that we did not respond. We would like to know about that. That is definitely not what we would do.

Mr. SYNAR. These people here——

Mr. WHITE. We would like to know—we are very concerned about this. If there were complaints, we would like to know about them because if we had complaints, we should have done something about them.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. GAYDOS. Thank you, Director. And we have you back so regularly, we are getting to know you pretty well.

Mr. MILES. I don't know, is that good or bad?

Mr. **Gaydos**. I think you can say you didn't get too rough treatment today. And I think Mr. Synar was sincere in his approach. But I didn't think he was too rough on you. It could have been a lot worse.

Mr. **Miles**. I think there is concern. And we are very concerned about what happened at Hallett. We want to take steps that it doesn't reoccur. It is unfortunate this happened. And now we feel the same way. We hope that with the steps we are taking now, we can move to prevent another disaster like this.

Mr. **Gaydos**. We are looking for results. I am sure Mike wants results. And I hope we will get results.

Mr. **Miles**. I think we are interested in the same thing—safety and health of the American worker. I think that a is common goal.

Mr. **Gaydos**. Thank you very much for another one of your appearances, and also for your associates'.

Mr. **Miles**. Thank you.

Mr. **Gaydos**. The Chair at this time calls Fire Marshal Rucker from the State of Oklahoma.

Marshal Rucker, let's take your statement and make it part of the record without objection.

Is that all right?

STATEMENT OF FIRE MARSHAL RUCKER

Mr. **Rucker**. That is fine. I would like to read it, sir, if I may.

Mr. **Gaydos**. All right. I hear it is a very concise and detailed statement. So, I am glad to have it read into the record.

Mr. **Rucker**. On Tuesday, July 25, 1985, at about 10 a.m., the Oklahoma State fire marshal's office began receiving reports that an explosion had occurred at the Aerlex fireworks manufacturing facility in Jennings, OK, involving up to 30 fatalities. State fire marshal agents from Tulsa were immediately dispatched. And I left for the scene from the Oklahoma City office.

Upon my arrival in Jennings, the investigation of the incident was underway by the responding fire departments, Oklahoma Highway Patrol, Bureau of Alcohol, Tobacco and Firearms, Pawnee County sheriff's office, the Oklahoma State Bureau of Investigation, in addition to State Fire Marshal Agents Shelly Phillips and Bill Burgess.

Lt. Jim King, Oklahoma highway patrol supervisor, troop K, had the area roped off and secured. I was advised by Bob White, agent-in-charge, ATF office in Tulsa, OK, that he had requested the national Alcohol, Tobacco and Firearms response team.

From an investigative standpoint, it was fortunate there were survivors and witnesses. Otherwise, due to the degree of destruction, we possibly would never have known the probable origin or cause of the explosion.

Our office investigated an explosion at the same site July 25, 1979. After this incident, it was assumed the facility did not reopen. We had no reason to know the facility was in operation since we had heard nothing about rebuilding, no construction plans submitted, no complaints or other information of any description.

It came to our attention during subject investigation that the Alcohol, Tobacco and Firearms units had been inspecting and approving the magazine and storage areas, but no inspections were made of the manufacturing operations by any other local, State or Federal safety agency. The OSHA agency, like the State fire marshal agency, was not aware the facility existed.

Details of our investigation into the incident, starting June 25, 1985, and concluding June 27, 1985, are covered in our report, including our opinion as to the probable origin and cause of the explosion, the loading and unloading of fireworks material from a pickup truck by two employees.

Following this tragic loss, the Oklahoma State Legislature introduced and passed State legislation, Senate bill No. 353, that would require all class B display fireworks manufacturers to comply with National Fire Protection Association Code No. 1124, Manufacture, Transportation, and Storage of Fireworks, 1984 Edition.

This legislation will require all manufacturers of class B display fireworks to be inspected and certified by the Oklahoma fire marshal prior to opening a manufacturing facility, and will also require the State fire marshal to conduct further inspections in regard to life safety every 6 months.

In closing, I would like to publicly commend Lt. Jim King, supervisor of troop K, Oklahoma highway patrol, for his professional actions upon learning of this incident. The State fire marshal agency has also worked with the Bureau of Alcohol, Tobacco and Firearms in other endeavors, and the cooperation has been excellent.

Mr. GAYDOS. I would like to call upon Mr. Synar.

Mr. SYNAR. Thank you, Joe.

Just a couple questions, Fred.

How long have you been in the fire business?

Mr. RUCKER. Since 1951.

Mr. SYNAR. Twenty-five years or more?

Mr. RUCKER. Yes, sir.

Mr. SYNAR. I am 34. That is right, yes.

Over 35 years; correct?

Mr. RUCKER. Yes, sir.

Mr. SYNAR. Have you ever seen anything like what you saw at Aerlex when you got on the scene?

Mr. RUCKER. No, sir, I haven't.

Mr. SYNAR. It is probably the worst that you have seen in your experience?

Mr. RUCKER. I would say that it certainly was, yes, sir.

Mr. SYNAR. You said in your testimony that—you mentioned the newly passed State law that gives your office the authority to inspect those class B manufacturers.

Now, you all will now inspect the class B wholesalers and handlers of explosives?

Mr. RUCKER. Yes, sir; that is correct.

Mr. SYNAR. Wholesalers and handlers?

Mr. RUCKER. Yes, sir.

Mr. SYNAR. OK. So there is not going to be any gaps between manufacturers, wholesalers and handlers; everybody will be inspected?

Mr. RUCKER. Hopefully, that would be that way, yes, sir.

Mr. SYNAR. Are you confident that we now have here in the State of Oklahoma sufficient laws to prevent another Aerlex from happening?

Mr. RUCKER. I would certainly hope that we could prevent another tragedy such as this. However, I am sure you all are well aware that we do not have any manufacturing people in Oklahoma at the present time.

Mr. SYNAR. Now that Aerlex is gone?

Mr. RUCKER. Yes, sir.

Mr. SYNAR. Thank you, Mr. Chairman. That is all.

Fred, thank you. And let me thank you and the highway patrol and the State of Oklahoma for the excellent job they did once the incident did occur. I know that you all spent endless hours up there. It was a tragic situation. But you and your people and all those associated with you, you did an excellent job and we are very proud of you.

Mr. GAYDOS. I think the State of Oklahoma should be commended for the fast action.

Was there legislative action taken, you say, or was that an indepartment ruling or determination?

Mr. RUCKER. No, sir. That was action taken by the legislature in that district, yes, sir.

Mr. GAYDOS. That is very excellent. It is a great tribute to the heads of——

Mr. SYNAR. Not like Washington, is it, Joe?

Mr. GAYDOS. I have no specific question to ask, but I commend you for your testimony. Other members of this committee are going to study the testimony. I want you to know that. And I appreciate your coming before the committee. Although you don't have any more of these manufacturing entities in Oklahoma, you would probably like to have the activity here, because jobs are essential, I presume.

Mr. RUCKER. Yes, sir.

Mr. GAYDOS. And I hope this new legislation would make the basic industry safe. That is what we are looking for—jobs. I know you are looking for them, too.

Mr. RUCKER. Certainly we are. And the employees should have a safe environment, exactly.

Mr. GAYDOS. Thank you very much, Fire Marshal.

Let me, if I may, Mike, for the record, sum up the committee action.

No. 1, at the outset, I really am most appreciative that Mike was instrumental in bringing us here and insisting upon us coming down here. I think it is going to be most beneficial to the other members on this committee to study this record.

I do want to explain to those who are here that we are touched by this tragedy.

This is a unique situation as far as the committee is concerned because it starts with the proposition that OSHA didn't have jurisdiction in this matter under existing practices. They didn't—whether they were at fault or not—but they didn't know the place existed. So that puts a little different complexion on the type of investigation we as a committee can carry on.

For instance, if this would have been an area where OSHA did have jurisdiction, we would have spent probably 2 days here. And we would have been talking to the witnesses and to the people that worked there and gone into detail. Mike and myself would have probably visited in their homes even to ask them what occurred out there, what was the practice, how did they handle that black powder, you understand, and how much did they ship, how much were they paid, how did they do it, who has relieved them, how many hours did they work, all those things.

But the reason why we are not making that inquiry is because originally, and admittedly, OSHA wasn't out there. So our investigation is more on a broad scale. And what we are going to make an attempt to do is analyze existing law, and hopefully we will not have a reoccurrence.

We say this with deep and heavy hearts: As to those who lost relatives or immediate family, we can't bring them back. And the only thing we can do as a committee after this has occurred, Mike, is to hopefully prohibit the tragedy from reoccurring, maybe in Pennsylvania, my own State, or Iowa, or someplace else.

It appears that this has put enough of a scare into the population and the State structure and Federal structure that probably we won't have anyone coming into Oklahoma carrying on this type of business. I don't know if that is good or bad. But all I know is that everybody is looking for jobs. And Mike and I spent all last night talking about our like situations existing in Pennsylvania and Oklahoma where we need jobs and new types of jobs.

So those are the things that the committee has to consider, and we are limited with that background. And that is why I want those that are here, our citizens that are here, to understand why we don't have you testify. I do want to hear from you. And Mike has made a good, practical arrangement which we will make a part of the official record. We are going to hold the record open. And anybody that wants to make a statement or wants to direct the committee's attention somewhere, you put that in writing and give it to your Congressman, and we will make sure that it gets into the record under the admission and direction of Congressman Synar. That is how we are going to work it.

Unless you have any other explanations, Mike, that is——

Mr. SYNAR. Let me just say, Joe, that I want to thank you on behalf of all the people here. We appreciate you taking the time out. You are a dear friend and close adviser, and in many ways I have been a successful Congressman because of your efforts.

All I would say is this: That we have a perfect example once again of 20/20 hindsight. What we need with these agencies is 20/20 foresight. And hopefully today's hearing will lead us to where ATF as well as OSHA will not wait for another tragedy like Aerlex to happen to do the things that any reasonable person using common sense would have found.

Mr. Chairman, thank you. I do appreciate you being here.

Mr. GAYDOS. I would like to close the hearing expressing sincere distress as to the deaths that occurred, the injuries, and the unique situation whereby even unemployment compensation is not involved, or wrongful death. I don't even know what the corporate structure is, the entity is, whether it is bankrupt or not, those things. You have our deepest sympathy. These questions ought to be answered in another arena, at another time, at another place, probably under lawsuits.

So, those affected, I know I speak on behalf of Mike and myself and the whole committee, good luck to you and I wish I didn't have to see you under these circumstances.

Thank you very much.

The committee is adjourned and the record will remain open for the admission of additional testimony.

[Whereupon, the subcommittee was adjourned, subject to the call of the Chair.]